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Developing and Implementing a Community-Based Defense Service:
Pilot Operations of the
Neighborhood Defender Service of Harlem

A Preliminary Report

of the

Vera Institute of Justice
Research Department

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Table of Contents

	<u>Page</u>
I. INTRODUCTION.....	1
A. The NDS Model.....	2
B. Implementation of the Model: NDS Pilot Operations	5
C. Implementing the Research on NDS.....	7
II. THE NDS CATCHMENT AREA.....	11
A. Introduction.....	11
B. Demographic Characteristics.....	15
1. Population.....	15
2. Income/Poverty Levels.....	17
3. Housing Stock.....	20
C. Crime.....	21
III. THE NDS START-UP PERIOD: ISSUES AND OPERATIONS.....	25
A. Introduction.....	25
1. Implementation Research.....	25
B. NDS' Goals and Structure.....	26
C. Implementation Issues: NDS Intake.....	28
1. The NDS Catchment Area.....	29
2. Building the NDS Caseload.....	31
Retained Counsel Cases.....	31
Institutionally Assigned Cases.....	34
D. Central Program Components.....	42
1. Community-Based Defense Service.....	42
The rationale for community-based defense.	42
Internal debates about the nature of	
community based defense.....	43
Community outreach	46
2. The Management Structure and Team Concept...	49
NDS management structure.....	49
Team concept and structure.....	50
Team operations.....	53
Overall management issues.....	54
3. Client-Centered Representation.....	55

4.	Time and Cost Issues: Increasing the Efficiency of the Criminal Defense Process	
	NDS Litigation Support Network (LSN).....	56
	Other efficiency issues.....	58
IV.	MANHATTAN ARRESTS AND NDS CASES: CASE PROCESSING IN CRIMINAL AND SUPREME COURT.....	63
A.	Introduction.....	63
B.	Description of the Arrests and Arrestees.....	63
1.	Manhattan Arrests.....	63
2.	Manhattan Residents.....	63
3.	NDS Catchment Area Residents.....	66
4.	NDS Clients.....	68
C.	Case Processing for NDS Catchment Area Residents	70
1.	Cases disposed at Criminal Court arraignment	71
2.	Cases continued at Criminal Court arraignment	72
D.	Future Research Samples.....	76
1.	Program Implementation.....	77
2.	Impact Evaluation.....	77
	BIBLIOGRAPHY.....	79
APPENDIX A:	Data Sources and Structure.....	81
APPENDIX B:	Manhattan Residents Arrested in Manhattan Between July 1 and November 30, 1990.....	85
APPENDIX C:	NDS Catchment Area Residents Arrested in Manhattan Between July 1 and November 30, 1990.....	89

I. INTRODUCTION

In 1990, the Vera Institute of Justice, with funding from the City and State of New York, created the Neighborhood Defender Service of Harlem Inc. (NDS), a not-for-profit corporation in New York City, established to develop new techniques in the public provision of legal representation to indigent criminal defendants. The aim of the project is to demonstrate that, by restructuring the manner in which this representation is delivered, public defender organizations can provide better services to their clients in ways that improve the quality of criminal justice generally.

NDS is a five-year project of action-research.¹ The NDS staff provide direct legal representation to indigent clients who reside in a designated catchment area in Northern Manhattan, including Central Harlem and adjacent neighborhoods in New York City. The representation is organized around a set of principles -- team representation, neighborhood-based representation, client-centered representation -- that distinguish it from most public defense services.

Operational aspects of the project were developed during a six-month pilot period (July - November 1990) while NDS' offices were being constructed and staff were being hired and trained. Before NDS commenced full operations in December 1990, the staff of senior attorneys, together with community workers, formed two pilot teams, providing representation to a small number of clients who sought the assistance of the Service. This period of pilot representation provided new NDS staff with an opportunity to explore strategies for handling operational issues, to begin to build relations with the community, to

¹ Since its inception with the Manhattan Bail Project in 1961, the Vera Institute has been committed to an action-research model -- designing replicable, innovative programs that are informed by planning research and whose effectiveness is evaluated using the most comprehensive research designs feasible. Research activities are the responsibility of the Vera Institute's Research Department. The Institute typically combines program funds with research funds separately secured from government agencies and private foundations to conduct the evaluation and disseminate its findings.

develop internal support systems, and to establish relations with various criminal justice agencies and with the courts in all the boroughs. This period also enabled researchers to build relationships with the new NDS staff and address technical problems with the evaluation design and necessary data sources.

This report describes some key aspects of the initial attempt of NDS staff to translate the principles of neighborhood-based defense into operational reality, largely as seen through the eyes of the organization's top managers. Views of other staff will be explored in later reports. This report also provides early information being collected by researchers on the NDS catchment area and on the pool of clients and cases the service is attempting to represent. Now that NDS is moving toward full operations, more formal aspects of an impact evaluation are beginning, although this work is in its earliest stages.²

Preliminary data on the NDS catchment area are presented below in Section II; early program implementation issues as viewed by NDS top managers are discussed below in Section III; a description of the NDS caseload during the pilot period and of the cases eligible for representation by NDS, compared to other Manhattan cases, is given in Section IV. Before turning to these issues of early implementation, however, it may be useful to some readers to provide a brief overview of the model of indigent criminal defenses NDS is designed to test, and to review where the organization is in the process of implementing that model.

A. The NDS Model

Over a five-year demonstration period, NDS staff are attempting to create and operate what many believe to be a fundamentally different kind of defender office. The representation provided by NDS is intended to be organized around three basic principles that distinguish it from virtually all other indigent criminal defense services.

² See Hillsman, 1991 for a detailed description of the Vera Institute's four year research plan for the NDS demonstration.

The first principle is that of neighborhood representation. NDS represents poor people accused of crimes based on their residence within a catchment area, rather than on their appearance in a particular courthouse. The main office of the project is located within its neighborhood catchment area, with a small, secondary office near the county courthouse. Through contacts with neighborhood organizations and an extensive publicity campaign, residents of the catchment area who require defense services are encouraged to contact the office before their first appearances in court. In addition, arrested persons from the catchment are regularly assigned to NDS as one of the institutional defenders available to indigent offenders in New York City.

After a review of several New York City neighborhoods, Central Harlem in Manhattan and the neighborhood immediately west of Central Harlem (Morningside Heights/Hamilton Heights) were selected as the demonstration site (see Sections II and III for a description of the NDS catchment area and changes in that catchment area during early months of program operations). Many neighborhoods within the five boroughs in New York City would have produced a sufficient volume of cases to support a neighborhood-based defender service, but other factors were important in selecting a site for the demonstration of the model. First, Harlem's geography permitted the catchment area to be expanded or contracted relatively easily. Second, Harlem has the highest concentration of resident-defendants who are arraigned in the court located in the borough of their residence (Manhattan), minimizing (but not eliminating) the need for addressing multiple jurisdictions.

The second principle upon which NDS is organized is team representation. In New York City, as in many jurisdictions, numerous factors conspire against the continuity of representation for indigents by a single lawyer throughout the various stages of case processing. These include the reassignment of cases after first appearance, staff turnover, scheduling conflicts produced by prosecutor-based tracking to different courtrooms, attorney vacations, attorney illness and attorney involvement in other cases. As a result,

most indigent defendants whose cases go to trial or take several appearances before a plea are not represented by the same attorney who represented them at arraignment, even though the unavailability of a client's lawyer produces considerable case delay and substantial sums are spent in the attempt to maintain continuous representation (Jacobs and Chayet, 1986).

In the NDS model, clients are represented by defense teams, rather than by individual lawyers. There are currently six such teams (seven in the second year), each consisting of a senior attorney (the team leader), a mid-level attorney, a junior attorney, two community workers, and an administrative assistant. Interns will be added to the teams by the end of the first year. The community workers and the administrative assistants -- many connected with the local neighborhood -- will fill the roles that investigators, social workers, and paralegals perform in more traditional offices. Clients are represented by these teams in much the same way that patients of a Health Maintenance Organization (HMO) are served by a team of doctors, nurse-practitioners, and other staff. The team members will share responsibility for a caseload and divide tasks in ways that give non-attorney team members a greater than usual share of responsibility.

The third principle of representation for NDS is client-centered representation. The Service represents clients in relation to criminal accusations, regardless of the number of cases, types of cases, or forum in which those cases are heard. Traditional defender services, in contrast, are case-centered. In New York City, for example, an indigent person facing three criminal accusations in three different boroughs within the city traditionally would be represented by three different lawyers; if one of those cases raised civil issues as well, a fourth lawyer would become involved or the client would be unrepresented. Although the NDS is not a "full-service" or "one-stop" legal office, it provides collateral representation in matters stemming from a criminal accusation. As prosecutors make greater use of civil devices (e.g., forfeiture, eviction, deportation, termination of parental rights) to pursue

alleged violations of the criminal law, NDS defense teams will attempt to develop similar agility.

The NDS model is based upon the assumption that together, team representation, neighborhood-based representation and client-centered representation will result in an early start to case preparation; rapid case preparation; high client confidence; and detailed information about the facts of the case, about defendants themselves and about available community resources that might be drawn upon to develop alternatives to conviction and/or sentence. These characteristics of the defense are expected, in turn, to produce early pretrial release, rapid case resolution, substantial use of sentencing alternatives and well-informed adjudications, all of which would reflect benefits to the criminal justice system and the defendant.

To facilitate the activities of NDS staff, a local-area computer network has been specially developed by NDS to meet the collective needs of its defense teams and the organization's managers. This network is designed to link the members of each team (to facilitate team representation) and to connect the teams with each other. It includes workstations at the small, downtown office near the court and allows team members away from both offices to maintain communication with the Service (to facilitate efficient distribution of tasks and flow of information). The system is designed to track all aspects of each case, maintain information about each defendant and identify which NDS staff member carries out each activity associated with a case. As data and documents are stored in this system, they are available to team members as they work for clients, to the team leaders as they deploy their team members in court and in the neighborhood, to the Service's managers as they monitor the work of the teams and to Vera researchers as they monitor implementation of the project and measure its effectiveness.

B. Implementation of the Model: NDS Pilot Operations

Before NDS could begin representing its first clients in June 1990, managers spent three months working on an intensive start-up activities. These included locating and

designing office space in Central Harlem; recruiting and hiring legal staff; purchasing and designing the local area network; and participating in the design of the research.

The recruitment effort was broad-based and intensive. NDS managers attended job fairs in several Northeastern cities; established liaisons with law school programs and clinics in New York City and elsewhere; and reached out to lawyers completing clerkships, to the National Legal Aid and Defenders Association (NLADA) and to various public defender organizations. By the end of June, all senior and junior attorneys had been hired. Recruitment of mid-level attorneys and other staff continued into the pilot period (July 1 - November 30, 1990).

Senior attorneys joined the NDS staff on July 1st and worked in collaboration with other managers on recruitment and hiring of mid-level attorneys, community workers and administrative assistants. During these early months, senior NDS attorneys and some community workers formed the first two defense teams and began representing a few clients. These "pilot" teams engaged in preliminary outreach efforts to the community, and tested various forms of neighborhood and courthouse intake. Senior attorneys continued to handle cases they had brought with them to NDS, while they set about acquiring and defending a small new caseload drawn from the catchment area (see Section IV). During the pilot period, the NDS switchboard was not yet operating on a round-the-clock schedule, but was open from Monday through Friday, 8 a.m. through 6 p.m. to receive calls from residents of the area inquiring about its services.

The five-month pilot period was designed to test operational procedures and do other key tasks to get the organization operational; it was not dedicated to building a substantial caseload. NDS staff took in a relatively small number of cases, sufficient for the purposes of training new attorneys and trying out various intake procedures while office renovations, installation of the computer network, and other basic organizational processes continued.

The extensive training of newly hired staff, a major focus of the pilot period, began in mid-October and continued until the end of November. Topics included: the arrest-to-arraignment process, investigation, motion practice, sentencing and pleas, case analysis and trial practice, juvenile delinquency cases and related civil proceedings. Friday afternoon meetings were reserved for office-wide discussions of various aspects of the work at NDS, often focusing on the specific dimensions of this work that were to make NDS a new and non-traditional defender service.

NDS met with its advisory board twice during the pilot period, in August and at the end of November. At the August meeting, central topics included staffing plans, recruitment, community involvement, the neighborhood base and intake strategies. The November advisory board meeting included a presentation of the research design by research staff and discussion of procedures to protect the confidentiality of research data; additional topics included relationships with the community, outreach efforts, intake and personnel changes.

Full program operations -- that is, the fielding of six operational defense teams and 24-hour-a-day seven-day-a-week switchboard service -- started on schedule at the beginning of December 1990. Yet the beginning of full program operations did not mean NDS was operating at full intake capacity. During the early months of full program operations (December 1st through February 28th), NDS staff concentrated on the process of building a caseload (see Sections III and IV).

C. Implementing the Research on NDS

Vera's research on NDS will both monitor program implementation and evaluate NDS' impact, using a quasi-experimental, longitudinal design that combines quantitative and qualitative methods. Integrating an on-going program process analysis with quantitative analysis of how NDS cases are processed over time will enable researchers to provide NDS staff and managers with feedback regarding program operations. Furthermore, periodic analyses comparing NDS cases with matched samples of cases drawn from court files will

provide measures of NDS' impact as its implementation proceeds. In addition, to the extent resources permit, in-depth interviews with key groups directly influenced by program operations, will provide rich qualitative data on changes over time in the way community members, clients, judges, prosecutors' staff, and city officials perceive the program's operations, evaluate the quality of its representation and assess its impacts on the issues of concern to them.

During the period in which senior NDS managers were actively engaged in planning and start-up activities (April-June), Vera research staff prepared a detailed research design. During the NDS pilot period (July-November), Vera research staff drafted a memo, delineating the potential risks to human subjects involved in the proposed research and detailing methods of protecting the confidentiality of research data. Research staff met with NDS staff to discuss the research and the confidentiality issues and to get feedback on the content and nature of the research effort.

Research staff also met with the NDS advisory board to discuss the research design and the confidentiality issues posed by that design. Members of the NDS advisory board expressed support for the proposed research, but also emphasized the importance of exploring the comparative time and cost of NDS processing for various types of cases. Board members stressed the policy relevance but also the complexity of such an examination. In the coming year, researchers and NDS managers will decide how to address this issue as part of the overall research.

Vera research staff established formal data sharing agreements with New York City's Criminal Justice Agency (CJA) and the Office of Court Administration (OCA), agencies that are providing Vera with arrest and court processing data for research purposes over a four-year period.

There were too few cases handled by NDS during this pilot period to permit systematic statistical analyses of how NDS cases compare to other Manhattan cases or other catchment area cases. However, the datasets supplied by these various agencies permit the

research to describe NDS-eligible cases and to test the overall approach to quantitative analysis of NDS impacts.

Research activities began in December 1990, as NDS moved into full operations. Research staff began with a series of preliminary interviews with some senior NDS managers that focused on how they viewed the organization's central operational issues during the staff's early attempts to implement the NDS model. Interviews will continue to include all NDS staff as the research progresses. Research staff also began compiling official data about the NDS catchment area, touring Harlem neighborhoods and meeting with people working in the area (including Community Patrol Officers in precincts within that area). These interviews and observations will expand in scope over the coming months and, along with continuing review of official data sources (e.g., 1990 Census data as available), will ultimately permit a richer description of the neighborhoods that comprise the NDS catchment area than is contained in this initial report. In addition, interviews with NDS clients, community residents and various criminal justice system actors and officials are scheduled to begin in the summer of 1991.

II. THE NDS CATCHMENT AREA

A. Introduction

Harlem is the center of African-American culture in New York. It is particularly famous, for example, for cultural institutions like the Apollo Theater, Dance Theater of Harlem, The Studio Museum of Harlem, The National Black Theater of Harlem and The Schomburg Center for Research in Black Culture but is equally well-known for its political, economic and religious organizations and traditions. No fewer than 90 houses of worship can be found in the NDS atachment area alone. The commercial center of Harlem is 125th Street which boasts a wide array of large and small shops, restaurants and business establishments. The Morningside Heights portion of the NDS catchment area is home to Columbia University and the nearby City University of New York, making it one of New York's educational centers. Harlem must also be considered a religious center as well. But, as in much of urban America, such positive characteristics exist side-by-side with high rates of poverty and crime that make it an appropriate location for the Neighborhood Defender Service.

The NDS catchment area encompasses a very large geographical area that is coterminous with three Manhattan Community Boards: Community Boards 9 (Morningside Heights/Hamilton Heights), 10 (Central Harlem) and 11 (East Harlem). Although the communities included in the NDS catchment are today dominated by black and Hispanic populations, they have always been ethnically diverse, including the newest immigrants drawn from various central American and Caribbean countries. Taken as a whole, the catchment area is best described as lower- to middle-income; although East Harlem is the poorest community in Manhattan in terms of household income, all three communities have median household incomes well below the city average.

There are specific neighborhoods or blocks in Central Harlem (like "Striver's Row", a small area in Central Harlem on 139th Street between Adam Clayton Powell Blvd. and Fredrick Douglas Blvd.), characterized by solidly middle- and professional-class people who

live in restored single-family brownstones. The contrast between blocks like Striver's Row and the many blocks of burned-out and boarded-up buildings surrounding them is staggering. More common throughout the NDS catchment area, however, are the nearly 40 high- and low-rise housing projects like the Esplanade Gardens complex and Harlem River Projects which are home to many working and middle-class families.

The specific NDS target area boundaries were defined by zip code (rather than other more traditional criteria) because defendant addresses would allow NDS staff to easily identify potential clients from lists of defendants provided by the city's pretrial service agency whose staff interview all arrestees prior to arraignment. NDS originally chose a catchment area defined by six Harlem zip codes encompassing Central Harlem and the Morningside Heights and Hamilton Heights neighborhoods on the upper west side of Manhattan.¹ This initial NDS catchment area was closely coterminous with Manhattan Community Boards 10 (Central Harlem) and 9 (Morningside Heights/Hamilton Heights).

In January, 1991, the NDS catchment area was expanded to include two additional zip codes (10029 and 10035) in East Harlem, encompassing an area coterminous with Community Board 11 (see Section III). This East Harlem neighborhood shares the general characteristics which make Central Harlem and Morningside Heights/Hamilton Heights appropriate target communities for NDS.

¹ These original zip codes were 10026, 10027, 10030, 10031, 10037, and 10039, and covered a large enough area to permit NDS to operate at full capacity.

B. Demographic Characteristics

1. Population

According to the 1980 Census, the three Community Boards included in the NDS catchment area have roughly equivalent populations.² East Harlem is the largest with 114,569 residents, followed by Central Harlem with 105,461 residents, and Morningside Heights/Hamilton Heights with 103,038. Together, therefore, the area is populated by about 323,000 people (about the size of mid-sized cities like Newark, N.J. or Oakland, California).

Although all three are predominantly minority neighborhoods, Central Harlem, East Harlem and Morningside Heights/Hamilton Heights are ethnically quite different from one another. According to official statistics, the city-wide ethnic breakdown in 1987 was 46% white, 24% black, 12% Puerto Rican, 12% Hispanic, non-Puerto Rican, 4% Asian, and 2% other (Stegman, 1987).³

Central Harlem has the highest percentage of black residents (92%) of any neighborhood in New York City. Puerto Ricans make up only 5% of Central Harlem's residents, and less than one percent are white. Morningside Heights/Hamilton Heights has a substantially higher percentage of white residents (26%) than Central Harlem, with 53% black residents, 9% Puerto Ricans, and 5% Asians. East Harlem has the largest percentage of Puerto

² The Demographic Unit of the New York City Department of City Planning reports that data from the 1990 Census will not be available until early 1992. The figures presented here will be up-dated as 1990 census data become available.

³ In the report from which these statistics are taken, the racial categories "white, black, Asian and other" exclude Hispanic, non-Puerto Rican and Puerto Rican which constitute separate categories. In the 1987 survey from which these data were taken, race was a self-identification item. Unfortunately, statistics on the racial and ethnic breakdown within Community Boards are not available.

Ricans (36%; 44% black; and 13% white). Both East Harlem and Central Harlem had fewer than one percent Asian residents.⁴

Census data also show significant differences in the number of "foreign-born" residents in these three areas.⁵ Morningside Heights/Hamilton Heights led with 26% foreign-born. East Harlem had 9% and Central Harlem had 6% foreign-born. More recent data on documented immigration between 1984 and 1987 (New York City Planning Department, 1987) show that, although none of the three areas is a major center for recent documented immigrants, Morningside Heights/Hamilton Heights had the most significant influx of immigrants.⁶ Morningside Heights/Hamilton Heights had the largest influx of immigrants during the period 1984-1987 of the three areas in the NDS catchment. The Hamilton Heights area had the single largest group of immigrants (7,339) during this period, and most (73%) came from the Dominican Republic.⁷ The Morningside Heights area

⁴ Hamilton Heights and East Harlem also had a significant percentage (6% each) of the population which did not fit into any of the ethnic categories above. Central Harlem had almost no residents who were not either "Black," "White," "Puerto Rican," "Asian," or "Native American."

⁵ According to the 1980 census, the "foreign-born" population includes persons not born in the United States, Puerto Rico, the U.S. Virgin Islands, Guam, or other outlying area of the United States.

These figures, of course, must be approached cautiously because they include only documented foreign-born persons. It is probable that there are a number of undocumented foreign-born immigrants who live in the NDS catchment area and were missed by the census. New York City officials claim that the 1980 census missed about 450,000 New Yorkers and it is certain that a significant proportion of these were undocumented foreign-born immigrants fearful of deportation (Navarro, 1990:B4). City officials have recently made the same charges regarding the 1990 census.

⁶ These data are organized by zip code, and because zip codes 10027 and 10037 both cross-cut the boundaries of these areas, disaggregating these data more exactly is impossible. However, the number of immigrants in these areas is sufficiently small that further detail is unwarranted.

⁷ Perhaps the single largest factor contributing to this larger number of new (documented) immigrants in Hamilton Heights is the presence of a significant Dominican population in the adjacent Washington Heights area to the north. The high percentage of "foreign-born"

attracted fewer than 1,800 immigrants during this period. Of these, roughly one quarter came from the Dominican Republic.

Central Harlem and East Harlem each had fewer than 2,500 immigrants arrive between 1984 and 1987. Dominicans and Jamaicans were the largest immigrant groups, followed by immigrants from various Caribbean and Central American countries. Compared with many communities in Brooklyn and Queens where documented and undocumented immigration appears to be very large in recent years, the NDS catchment area has attracted few immigrants, at least as far as official statistics are concerned.

Census data show that a significant portion of East Harlem and Morningside Heights/Hamilton Heights residents speak a language other than English at home. In Morningside Heights/Hamilton Heights, 35% of the population aged five years and older spoke a language other than English at home; for 28% that language was Spanish. In East Harlem, 49% of people aged five and over spoke a language other than English at home, with Spanish speakers accounting for all but 4%. By contrast, 6% of Central Harlem residents in this age group speak a language other than English, although most of these also speak Spanish.

Census data also show that education levels also vary across these three areas. Of the residents aged 25 years and older, 55% in Morningside Heights/Hamilton Heights are high school graduates. In Central Harlem the figure is 43%, and in East Harlem 41%. The borough-wide percentage of high school graduates was 68%.

2. Income/Poverty Levels

According to the most recent available data (Stegman, 1987), East Harlem, Central Harlem, and Morningside Heights/Hamilton Heights have some of the lowest median

residents already in Hamilton Heights by 1980 (according to census data) suggests that there was a considerable population of recent immigrants in this area prior to the 1980s and '90s.

household incomes in Manhattan. East Harlem was the poorest area in Manhattan, with a median annual household income of \$8,305. The expansion of NDS's catchment area into East Harlem thus serves to expand its free legal services to a population which is even more severely and uniformly impoverished than that in Morningside Heights/Hamilton Heights overall. Central Harlem had a median household income of \$8,600, and Morningside Heights/Hamilton Heights had the third lowest median household income in the borough with \$13,490. All three areas were significantly below the city-wide median household income of \$20,000.

Morningside Heights/Hamilton Heights has significantly higher median household incomes than East or Central Harlem possibly because the southern portion of Community Board 9, Morningside Heights, includes many white, middle-class residential areas surrounding Columbia University. This neighborhood seems more a continuation of the relatively affluent Upper West Side to its south than of the beginning of Western Harlem to its north and east. Not surprisingly, therefore, the northern half of Community Board 9, Hamilton Heights, is poorer and has a larger percentage of minority residents than Morningside Heights.

Besides having the lowest median incomes in the borough, East and Central Harlem have the highest percentage of households with annual incomes under \$5,999 in Manhattan (East Harlem--39%, Central Harlem--32%). By contrast, in Morningside Heights/Hamilton Heights, 19% of households earn under \$5,999.

East Harlem also has a higher proportion of households earning \$25,000 or more per year than does Central Harlem. Fifteen percent of all households in East Harlem fall into this category.⁸ Morningside Heights/Hamilton Heights has a significantly higher percentage

⁸ These households may be concentrated in the southern portion of East Harlem. The southern boundaries of both Community Boards 9 and 10 (Morningside Heights/Hamilton Heights and Central Harlem respectively) begin at 110th Street (the northern boundary of Central Park). However, Community Board 11 (East Harlem) begins farther downtown, at 96th Street. Just as the Morningside Heights area abuts the more affluent Upper West Side,

of households in this category (33%), indicative of the substantially higher proportion of relatively affluent households in this area.

Central Harlem has the second-lowest percentage of households earning \$25,000 or more per year in New York City (7%). Unlike the areas to the east and west, Central Harlem does not have a relatively affluent area along its southern border. Bordered instead to the south by Central Park and flanked by East Harlem and Morningside Heights/Hamilton Heights, Central Harlem is effectively insulated from the wealth of the Upper East and Upper West Sides.

Other poverty indicators also show that East and Central Harlem are among the poorest neighborhoods in New York City. East Harlem has 47% of its households living below the federal poverty level, while Central Harlem has 37%, while Morningside Heights/Hamilton Heights has 26% of their households living below poverty (Stegman, 1987).

Statistics on the percentage of households on public assistance reinforce the evidence of poverty in these neighborhoods. In East Harlem, 30% of households are on public assistance, while in Central Harlem 23%, and in Morningside Heights/Hamilton Heights 13% of households are on public assistance. Along with certain areas in the south and Central Bronx (Mott Haven/Hunts Point, Morissania/Belmont), East and Central Harlem appear to be among the poorest neighborhoods in New York City by these measures (Stegman, 1987).⁹

so East Harlem abuts the Upper East Side, the single most affluent area in New York City. The southern portion of the East Harlem area (between 96th Street and 110th Street, with the stabilizing presence of the prestigious Mount Sinai Hospital complex), is generally more affluent than the central part of East Harlem, and this relative affluence is most likely a result of the close proximity of the truly affluent Upper East Side. However, some more affluent cooperative housing projects in Harlem lie in the northern tip of Community Board 11 (East Harlem). These are likely also to be home to some of the 15% of East Harlem households earning \$25,000 or more.

⁹ The effects of poverty in these Harlem communities is also reflected in high mortality rates for African Americans living there. A recent study conducted by two doctors from Harlem

3. Housing Stock

Housing in Manhattan consists almost entirely of multiple dwelling structures. This is no less true for the affluent Upper East Side than for Central Harlem. Morningside Heights/Hamilton Heights is 100% multiple dwellings and, as such, is one of two neighborhoods in the city almost entirely without one- or two-family dwellings. Central Harlem and East Harlem are both 99% multiple dwellings.

Central Harlem (and to a lesser degree East Harlem) has lower median gross rents¹⁰ than the poorest neighborhoods in the Bronx.¹¹ Central Harlem had the lowest rents in New York City in 1987 (median gross rent of \$243 per month). East Harlem had a median gross rent of \$250. Morningside Heights/Hamilton Heights was somewhat more expensive to live in, although still cheap compared with much of Manhattan (median gross rent of \$336). The city-wide median gross rent was \$395.

Central Harlem also had the highest percentage of rents below \$300 (66%). This again is a higher percentage than is found in those Bronx neighborhoods whose poverty indicators showed them to be poorer generally. In East Harlem, 56% of rents were less than \$300; and Morningside Heights/Hamilton Heights had 41%. In accord with the picture of

Hospital showed that the death rate for African Americans under the age of 65 in central Harlem was almost three times the rate of whites in America overall. The death rate in central Harlem is higher than that in Bangladesh (Terry, 1990:1).

¹⁰ "Gross rent" refers to the monthly contract rent plus the estimated average monthly cost of utilities (electricity, gas and water and sewer) and other fuels (oil, coal, kerosene, wood, etc.) if these items are paid for by the renter in addition to contract rent.

¹¹ These poor areas in the Bronx (Mott Haven/Hunts Point and Morissania/Belmont) have substantially higher proportions of residents living below the poverty line, substantially higher proportions of residents receiving public assistance, and lower median household incomes than any other area in the city.

an almost uniformly poor population, Central Harlem had almost no rents of \$750 or more. East Harlem had 2% of rents in this category, and Morningside Heights/Hamilton Heights 5%.

Surprisingly, data show that Morningside Heights/Hamilton Heights has the poorest quality housing in Manhattan indicated by a low (38%) percentage of housing with "no deficiencies" in maintenance and equipment (Stegman, 1987). Yet this area surpasses East and Central Harlem on almost all other quality of life and poverty indicators (Central Harlem--44% with no deficiencies; East Harlem--51%).

However, by contrast, Central and East Harlem lead the city in the percentage of housing with boarded-up buildings nearby. Approximately three-quarters of residences in Central Harlem (71%) and East Harlem (77%) had boarded-up buildings nearby, in contrast to Morningside Heights/Hamilton Heights, where 48% had board-ups nearby. These are all very high figures, considering that the overall percentage of board-ups nearby for Manhattan was 25%, and that in the poorest area in the Bronx, 65% of residences were near boarded-up buildings. The generally poor quality of housing in Central and East Harlem (as indicated by a low percentage of housing with no deficiencies, and/or a high percentage with multiple deficiencies and board ups nearby) helps explain why the median gross rents are so cheap there, and why so few rents exceed \$750.

C. Crime

The NDS catchment area covers six Manhattan North police precincts (the 23rd, 25th, 26th, 28th, 30th and 32nd).¹² Within the context of Manhattan itself, these six precincts produce a disproportionate number of criminal complaints when controlling for population size. According to the most recent crime complaint data, the incidence of "crimes against the person" (murder/non-negligent homicide, rape, robbery and felony

¹² There are a total of 21 precincts in Manhattan, split between two Police Department borough commands -- Manhattan North (11) and Manhattan South (10).

assault) is substantial in the NDS catchment area. Although the total population of the catchment area (323,068) represents 23% of Manhattan's dense population (1,428,285), it accounts for 48% of all homicide complaints, 48% of rape complaints, 42% of felony assault complaints, and 22% of all robbery complaints recorded in Manhattan in 1990.¹³

It appears that Central Harlem (the 28th and 32nd precincts) leads the areas in the NDS catchment in terms of violent crime. These two Central Harlem precincts, while accounting for a third of the catchment area population, generate 40% of all violent crime complaints in the catchment. By contrast, the Morningside Heights/Hamilton Heights part of the NDS catchment area accounts for 35% of the catchment's population but 27% of its violent crime complaints. Clearly, these official statistics draw negative popular attention to these neighborhoods. A recent New York Magazine article, for example, ranked the relative "dangerousness" of all 75 New York City police precincts based on a "danger-index ratio" which calculated the frequency of violent crimes against the person per resident weighting crimes like murder and rape more heavily than robbery and felony assault (Greenberg, 9/30/90). According to this index, the article ranked the 28th and 32nd precincts (Central Harlem) second and third in "dangerousness". The 23rd and 25th precincts (East Harlem) were ranked 21st and 5th, while the 26th and 30th precincts (Morningside Heights/Hamilton Heights) were ranked 25th and 8th, respectively.

However, the six precincts in the catchment area account for a considerably smaller portion of the non-violent felony complaints (property crimes) recorded in Manhattan. Although the catchment area houses 23% of Manhattan's population, it accounted for 17% of burglary complaints, 13% of all grand larceny auto complaints, and 6% of all grand larcenies reported in 1989.¹⁴

¹³ Population figures are from the 1980 census, the most recent available. Crime complaint data are adapted from the New York City Police Department's Statistical Report: Complaints and Arrests 1990.

¹⁴ Reported property crime in Manhattan is concentrated in relatively affluent residential areas and highly concentrated commercial areas in mid-town. Unreported property crime,

The NDS catchment area also accounts for a substantial number of narcotics arrests. Police department data indicate that the six precincts in the NDS catchment area accounted for 38.5% of all narcotics arrests in 1990 (n=6,459). They also accounted for 44% of Manhattan narcotics complaints in 1990 (n=6,723). Since the number of both narcotics arrests and, especially, narcotic complaints are extremely sensitive to the amount of police activity, it may be assumed that the NDS catchment area has been the site of considerable police anti-narcotics activity during 1990.¹⁵

This description of the NDS catchment area (population characteristics, measures of poverty and crime) does not include a broader discussion of the rich and complex political and social organization for which these neighborhoods are justly famous. However, future reports will examine the political and social organization of the NDS catchment in greater depth as well as the implications they have for NDS's efforts to create a client referral system through community outreach.

however, may well be spread more widely across both affluent and less affluent neighborhoods.

¹⁵ Narcotics arrest and complaint data were adapted from statistics provided by Manhattan North and South Narcotics Bureaus.

III. THE NDS START-UP PERIOD: ISSUES AND OPERATIONS

A. Introduction

I. Implementation Research

In December 1990, Vera research staff began structured interviews to explore issues that were arising as NDS' staff began the process of creating a program based upon an innovative but untested model of neighborhood defender services. This research effort consisted largely of interviews with some senior NDS managers, supplemented by a review of program documents.¹ These interviews provide a topical overview of several key issues, rather than a comprehensive digest of the opinions of these senior managers on all operational and policy issues raised during the early months of project implementation. In some cases, the materials drawn from these interviews reflect a manager's own views about a process or policy; in other cases, they reflect a manager's view about what others in the organization feel or think. While these senior NDS managers are clearly aware of at least some part of the spectrum of opinion among staff on issues confronting the office and have sometimes tried to report on the diverse array of opinions as well as on their own, there is no assurance that their views reflect the actual range of positions among NDS staff or even among all senior managers. More research interviews with a full spectrum of staff are required before the picture is complete.

These initial interviews focused on the managers' perceptions about the goals of NDS, including their view about what community-based defense really means operationally

¹ Between December 1st and February 28th, Vera research staff conducted and recorded 13 in-depth interviews with some, but not all, NDS senior managers, including the director and the project director. Research staff prepared detailed notes about each interview, including partial transcriptions. These data have been computerized using a free-form database management software package (askSam) and have been subject to systematic content analysis.

and what the nature and purpose of community outreach is; the issues they felt were significant about the definition of the NDS catchment area; their views about the evolution of client intake strategies and ways to build a full caseload; the problems and the potential they saw in the emerging operations of defense teams and in carrying out client-centered representation; and their views about emerging managerial and policy issues.

The strategy of focusing on a small number of higher-level managers in the early stages of the research on the implementation of the NDS model was designed to increase understanding of how these strategically located individuals viewed the principles and assumptions underlying this program's stated goals and to provide a brief overview of salient early operational issues, as they saw them. Because no new organization -- and certainly not one providing highly professional services to individual clients -- is created exclusively from the top down, subsequent stages of the research will explore implementation issues as perceived by NDS staff in all positions, and the ways in which NDS staff and management collectively modify and adapt program structures and operations, as well as their expectations about outcomes.

B. NDS' Goals and Structure

The primary stated goals of NDS are to provide free high-quality defense to indigent residents of the Harlem community not only without increasing the overall costs of criminal case processing, but by conserving system resources through reductions in pretrial detention and times to disposition.

The senior NDS managers interviewed uniformly believed that one operational aspect of NDS essential to achieving the goals of both quality defense and system efficiency, is "front-loading" work on the case -- having intake procedures that bring the NDS team into the defendant's case early, preferably well before arraignment, and conducting immediate and thorough investigations within the community. They firmly expect that early involvement in cases will lead to actual improvements in arraignment (or other early appearance) outcomes (increased use of ROR, lower bail amounts and more release on bail), faster and

deeper case investigations and, thus, more favorable case outcomes, in some cases earlier in the process.

These NDS managers stress the value of early intervention in the criminal defense primarily because of the enhanced investigations it permits. As one senior manager put it:

Information...is the only power defense lawyers have (in this system); they don't have any statutory power, they don't have any formal power in the system. I mean, all the other actors have powers: judges have powers, prosecutors have powers, police have powers. Defense lawyers have no power except their ability to use their information. That information includes knowledge and information about the law, information about the process, information about the clients. But you have to get that stuff.

In addition, these managers agree that early knowledge enhances the ability of the defense to secure optimal case outcomes. as another manager said,

Our lawyers know about cases, so it seems to me that they should, logically or ideally, be able to avail themselves of appropriate plea offers at appropriate times. And generally there's a moment for a plea offer. It may be because a particular judge is in the part; it may be that you're in a good part and you're going to a bad part; it may be because...you know a lot more about the bad stuff in the case before [the DA]...and when the DA finds it out the offer's going to go up... It's simply that knowledge is really power in knowing what to do with the case, and we have knowledge a lot earlier....

According to senior managers, the central structural features of NDS -- its community-based, team-based and client-centered approach -- all contribute to the organization's capacity to front-load defense activities and, thus, potentially improve the quality and efficiency of the defense process. Clearly, in the view of these senior managers, whether NDS' achieves these goals depends very much on how central program features are implemented, in particular how cases are obtained, how the team structure is established, and how the "community-based" and "client-centered" components of program operations are operationalized. However, even this small group of top managers do not uniformly agree on specifically how to accomplish these tasks and they believe there may be an even greater range of opinion on some issues within the organization. This is not surprising either in a new organization or in one that is operationalizing a new model for the first time.

As will be seen in Section C, below, the community-based aspect of NDS, while central to all the senior managers interviewed, has proved to be the most controversial program component discussed in these interviews. The fact that NDS draws its clients from a geographically defined catchment area -- and can represent clients in a variety of jurisdictions (criminal courts in other boroughs, Family Court, Federal courts, civil courts and a variety of administrative tribunals) -- is viewed as structurally essential to NDS and as distinguishing it from other defender services that draw cases from a single courthouse base alone. However, NDS is also "community-based" in that it is physically located within that catchment area and is service-oriented, that is, committed to expanding defense services to residents of that area. NDS is not, however, a "grass roots" organization -- that is, it was not conceived and developed within the community it represents, although some of the managers interviewed speak frequently of representing the general interests of that community. In conversations with these few NDS managers, discussed more fully below, the various definitions of what it means to be "community based" can at times overlap. Some of the central issues that arose at NDS during the start-up period appear to be intrinsically related to these varying perspectives.

C. Implementation Issues: NDS Intake

During the first three months of "full program operations," (i.e., after the activation of all six defense teams) one focus of senior NDS managers (and certainly the Project Director's, whose primary responsibility this was) was building the caseload. According to program guidelines and City and State contracts, any indigent resident of the NDS catchment area who is involved in a criminal case is eligible for free representation by NDS. Yet the process of becoming fully operational underscored the importance of a number of structural issues about how to acquire clients. How effective would community outreach be in encouraging "walk-in", "call-in" or otherwise retained clients?² What proportion of NDS

² Indeed, until the program became fully operational, managers' conceptions of exactly how clients, other than those assigned by the court, would actually get to NDS remained fuzzy. Would they walk in off the street, have a relative call, or what?

clients would be assigned through institutional arrangements with criminal justice officials either at the courthouse or elsewhere? How should this process of institutional assignment be structured and where should it take place?³

1. The NDS Catchment Area

As noted in Section II above, the NDS catchment area was originally defined by six contiguous zip codes which together include the communities of Central Harlem and Morningside Heights/Hamilton Heights. The Director and Project Director had selected the original six zip codes by analyzing official data on the number and location of Manhattan arrests for 1988 in an effort to identify a self-contained area which would be easily identifiable to system actors as the NDS catchment area and provide enough arrests to sustain six defense teams:

...the decision was basically made around zip code delineations. We thought that would be the only identifiable criteria of residence which is also recognized by the courts. Otherwise we would be charting address numbers and streets on every case. The boundaries are zip code boundaries, which would help everyone in the system (CJA, Courts, Police) identify which cases are NDS cases.

The initial decision to include the Morningside Heights/Hamilton Heights area with Central Harlem, rather than the equally close East Harlem area (see map in Section II), was made on pragmatic grounds. The project's designers started with Central Harlem as the community around which to carve the catchment area. However, the boundary lines for all the zip codes in the northern part of Manhattan

³ Although the catchment area was clearly large enough to provide a sufficient number of clients for NDS, there were questions about whether the number of Harlem residents arrested in Manhattan had declined substantially since 1988, the period that served as the basis for NDS planning.

were highly erratic from the standpoint of various natural community boundary lines. Yet zip code designations were essential to routinely and quickly identifying eligible clients. After trying all the combinations possible that would give coherence to the concept of community (including having the entire catchment contiguous, without "holes") as well as sufficient client volume, Morningside Heights/Hamilton Heights was selected along with Central Harlem. As is evident from the discussion in Section II, this gave NDS one of the two Spanish-speaking areas in Northern Manhattan, but not the largest (East Harlem).

By the end of December, however, NDS managers were considering whether to expand the catchment area to include two zip codes in East Harlem. One senior manager alluded to the range of reasons for interest in expansion, including the concern felt by some to speed up intake.

...I would like to expand the catchment. I don't know if that's a shared feeling on the part of the staff... (T)he downside of it is that certainly the further we expand the catchment, the less of a neighborhood-based office it is. One could, however, argue that it is a natural part of the expanded Harlem neighborhood; it does include a specific sort of Puerto Rican, Hispanic population that we don't serve generally in this office. There are a lot of reasons for pushing that agenda for an expanded catchment, not the least of which is that it will give us more cases.

However, this was not the only reason, as this quote indicates. According to another senior manager, virtually all the senior staff wanted to include East Harlem in the NDS catchment. He reports that some senior staff had personal roots in this community which they saw as enhancing successful community outreach efforts. In addition, the location of the central NDS office itself made this expansion logical, according to this respondent. As the maps in Section II show, the office is located on the eastern edge of Central Harlem. Without the inclusion of East Harlem, there were people two blocks from the NDS office who weren't eligible for its services. Finally, this senior manager reports that some people in the office were concerned that, because residents of East Harlem "think of themselves as

from Harlem", an organization calling itself the Neighborhood Defender Service of Harlem would create confusion and annoyance by excluding them.

2. Building the NDS Caseload

By the beginning of February, the NDS catchment area had been expanded to include two zip codes in East Harlem. The decision to expand the NDS catchment area was made at that time partially because at least some senior managers wanted to increase the number of cases represented by NDS more quickly. During early 1991, some key NDS managers were concerned that the program was "woefully below what we need to build a caseload" and estimated that staff were working at 15 to 20 percent of capacity.⁴ While this concern was not universal among senior managers, the main activity for NDS staff during this period was to experiment with a variety of case assignment procedures in an effort to devise a successful mix of strategies that would routinely provide an adequate caseload.

Retained Counsel Cases. A central feature of NDS is its ability to serve as retained counsel for indigent residents of the NDS catchment area who call or walk-in and request defense services in a criminal matter, regardless of the court or jurisdiction within which their case may be heard. This feature of NDS is not shared by court-based defender organizations, such as, in New York City, either the criminal branch of the Legal Aid Society (LAS) or 18-B Panel attorneys, who exclusively represent a client for a specific criminal case which is assigned to them in a particular courthouse.

To facilitate its ability to serve as retained counsel, NDS ensures that potential clients can reach an NDS attorney by phone on a seven-day-a-week, 24-hour-a-day basis. At night and on weekends, NDS phones are switched to "night-mode." Outside callers are instructed

⁴ NDS managers currently estimate "capacity" as 4,000-6,000 cases entering NDS annually, depending on average times to disposition that emerge over the first year of full operations. See the discussion in Section IV below about NDS' current intake and the size of the catchment pool.

by a recorded message (in both English and Spanish) to stay on hold while their call is transferred to an NDS attorney. On any given day, one of the six NDS teams is "on call." Attorneys whose team is on call have designated shifts (e.g., 6 p.m. to 12 p.m.) during which they are responsible for answering calls that are forwarded to them (at home or wherever they plan to be) through the NDS telephone system. Clients will be represented by the team that responds to their call.⁵

NDS' community outreach activities -- meetings with community and neighborhood groups, posters throughout the catchment area, establishing connections with local political leaders (discussed below) -- are designed to encourage community residents to call NDS in the early stages of criminal case processing (e.g., shortly after a relative has been arrested or, perhaps, even before an anticipated arrest has been made). Over time, NDS managers expect to build a clientele by encouraging previous clients retain NDS as counsel if they are rearrested -- not an unreasonable expectation, given the data reported in Section IV that nearly three-quarters of all sampled arrestees from the catchment area had prior arrests.

Most of our clients will get rearrested. We are attempting to create these laminated cards with the team and the notes on client rights on the back.

⁵ Call-in cases are assigned to teams on a rotating basis. New "call-in" clients are assigned to the team that is designated as on call on a given day. Returning clients can call the team that first represented them directly or be reassigned to their original team, once they have been identified as a returning client. (The NDS computer system will facilitate the identification and assignment of repeat clients who do not mention the fact that they have previously been represented by NDS.)

Cases that come in to NDS through institutional assignment (discussed in the following section) are handled by the team assigned to institutional intake (e.g., at the courthouse or precinct stationhouse) on a given day. Responsibility for institutional intake also rotates among teams. At the time of this writing, NDS teams are assigned cases in Manhattan Criminal Court three days a week. This means that any given team is responsible for "institutional intake" approximately twice a month.

These will be given out like a diploma to graduating clients.⁶ This is what you should present to the police when you are busted. Hopefully the case will come back to the same team time and time again.

In addition, it is anticipated that new clients will be referred to NDS by informed friends and relatives, as well as by previous clients who were satisfied with the quality of NDS' representation. One senior manager gave the following example:

(A client) came into the office with a drug charge on him. NDS felt that it was a weak case, but they called him up the next day to get him to take them to the apartment where the drug deal happened. When they got to the apartment, NDS staff started taking measurements to create a map of the apartment; they took pictures, etc. The defendant saw all of this work being done on his case, and said that he had never seen anyone come to a crime scene to do this kind of work. He asked for more business cards to give to his friends...[Fieldnotes.]⁷

Yet, during the first few months of full program operations, NDS was getting a relatively small number of call-in or walk-in cases. One NDS manager estimated that they were getting, on average, roughly two cases a day through the call-in process.⁸ To increase these numbers more rapidly, interviewed senior managers report that the team leaders

⁶ Actually, it is reported that NDS staff are beginning to give these cards to all clients as soon after intake as possible; this is to ensure that the client knows whom to call as the current case progresses, or if they are arrested again before the current case is disposed. One senior manager reports that, for reasons still unclear to researchers, NDS staff were slow to start using these cards regularly.

⁷ Previous quotations have been verbatim transcriptions of recorded interviews with NDS senior managers. However, here, and in a few places later in the text, the indented "quotations" are very close paraphrases or summaries rather than direct quotations. These non-verbatim selections are indicated by the reference [Fieldnotes.] at the end of the indented text.

⁸ This estimate does not include Harlem residents who mistakenly call NDS seeking representation exclusively for civil matters. NDS managers estimate that they get five or six such calls a day. They generally refer these callers to other agencies that provide civil representation.

decided to take over responsibility for coordinating the outreach activities of NDS staff from other management staff who had initial responsibility for this task. One senior manager interviewed reported on a meeting where this issue was raised:

...there was a meeting to discuss expanding the catchment. At the meeting, team leaders displayed frustration with the pace of intake-oriented outreach. They agreed to divvy up the outreach effort by team, parcelling community organizations into six or seven categories, one to each team. Main targets were schools, welfare offices, hospitals, and dissemination of literature in the streets. Some teams might also attend meetings of community groups to make contacts, describe NDS, and leave some literature. [Fieldnotes]

The senior managers interviewed expressed the feeling that NDS needs to demonstrate the organization's ability to generate a substantial number of cases in which NDS is retained as counsel before arraignment. As one manager put it:

(For) a lot of people, a lot of judges, a lot of supporters of the project in government, that was the piece they were most skeptical about -- that anybody would walk in before arraignment. And our theory was we would have to be very aggressive in outreach and education, and in working with our assigned clients, so that next time, if there was a next time for them, they would call us ahead of time.

Some senior managers also believe that the ability to generate a substantial retained clientele is the key to NDS' ability to affect the efficiency of the court system generally by "front-loading" the defense process and to achieve the primary goals of the program -- better service to the defendant:

Frankly if, in five years, we aren't sufficiently felt to be the lawyers for the community that people don't instinctively call us in those cases, we will have failed.

Institutionally Assigned Cases. During its first three months of full operations, NDS also continued its on-going search for efficient and effective methods of generating a caseload through institutional assignment (i.e., cases in which NDS staff, in lieu of staff from other potential public defense services, are assigned to represent indigent defendants.)⁹

⁹ Virtually all arrests in Manhattan including individuals from NDS's catchment area, whether they involve misdemeanor or felony charges, are taken to the Manhattan Criminal Court in lower Manhattan, a trial court of limited jurisdiction, for initial arraignment. If

During the five month pilot period, NDS experimented with attempting to identify eligible NDS cases at various arraignment shifts in the Manhattan Criminal Court, but had difficulty specifying a point at which a substantial number of NDS-eligible cases could be assigned. One senior manager expressed his frustration at the absence of a single point of case assignment to defenders in the processing of cases in the Manhattan Criminal Court.¹⁰

I tried day arraignments [in Manhattan Criminal Court]. I tried night arraignments... I mean I haven't found a system where at any given point I'm picking up more than two or three cases...

Despite these early difficulties in identifying enough cases through arraignment-based case assignment, efforts to develop a courthouse assignment option continued. However, in addition, NDS began an experiment involving precinct-based case assignment within Harlem itself in December 1990. A relatively recent, unrelated experimental program involving a video hook-up between police precincts and the Manhattan District Attorney's complaint room provided a unique opportunity for NDS to attempt to identify clients at the precincts prior to arraignment. As a consequence of this program, a significant

cases are not disposed at arraignment, they either remain in Criminal Court for disposition as a misdemeanor or a violation or they are transferred to Manhattan Supreme Court (the county's trial court of general jurisdiction), if the prosecutor is pursuing a felony conviction.

Generally, all defendants at Criminal Court are considered "indigent" for purposes of arraignment and counsel is provided by the court at or just prior to the defendant's first court appearance in the arraignment part. Based on established agreements with the court, representatives of the Legal Aid Society (LAS: the main institutional public defender in New York City) and of the 18-B Panel (a group of private attorneys, designated as eligible to represent as assigned counsel indigent defendants not represented by LAS), are available in the courthouse for assignment to indigent defendants.

¹⁰ As others have noted (McConville and Mirsky, 1986-7), this court differs from others in New York City in having no such point; cases can be assigned at any point in a continuous flow.

proportion of arrested individuals residing in the NDS catchment area are booked in precincts also located within the catchment area, and lodged in the 25th, 30th or 32nd precinct until after prosecutors complete the criminal complaint against them. When they are ready for arraignment, they are transported to the courthouse downtown. Previously, most had been transported downtown earlier, to the Central Booking facility whether they were booked with all other Manhattan arrestees, and then waited for the complaint to be completed and taken to court. As a result of this pilot project, some catchment area residents arrested in the evening or at night within that area remain uptown in the precinct until mid-morning.

With the cooperation of the Deputy Mayor for Public Safety, the New York City Police Department and the Manhattan District Attorney's Office, NDS began an experiment in which NDS was assigned cases being booked by the video hook-up in the 32nd precinct.¹¹ By approximately 6:30 a.m. on designated precinct intake days, pretrial services interviewers from CJA, stationed in these precincts would generate for NDS a list of all individuals being held for transportation downtown later in the morning. The NDS team assigned to precinct intake on a given day would review that list to identify individuals who lived in the NDS catchment area. According to their agreement with various criminal justice officials, NDS would screen out anyone who had been arrested before 5 p.m. the previous afternoon.¹²

¹¹ The 32nd precinct video hook-up with the District Attorney's complaint room downtown permits prosecuting attorneys to interview arresting officers (and, possibly, witnesses) who are in the precinct rather than in the central booking facility. This video hook-up is used by officers in the 25th, 28th, 30th, 32nd and 34th precincts.

NDS management perceived the less crowded precinct holding facility as more amenable to defense attorney-client interviews than the more crowded and busier downtown facility. They also believed that a large proportion of those being processed in or near the NDS catchment area would be NDS-eligible (i.e., residents) and that, therefore, precinct assignment would be an efficient way of reaching a substantial number of their prospective client pool.

¹² According to the agreement between NDS and the Manhattan prosecutor's office, NDS would avoid cases in which arrest-to-arraignment time would necessarily exceed the 24-hour

Under the precinct intake agreement, NDS attorneys were able to interview assigned clients in the stationhouse before the prosecutor's office downtown had completed the process of drawing up the criminal complaint using the video hook-up. This arrangement, which provided assigned counsel to defendants at an earlier stage than any other assigned counsel plan in the city, permitted NDS teams to begin investigation before arraignment (e.g., visit the crime scene, interview witnesses), to attempt to verify community ties if CJA had been unable to do so and to try to get family members to attend the arraignment. Although NDS had not initially planned on precinct-based assignment, the advantages that NDS and the City expected of it were considerable -- defense attorneys' early involvement in these criminal cases would reduce pre-arraignment delays and improve the current inefficiencies in the court created by these delays.¹³

Yet this mode of intake was not without problems. NDS attorneys assigned to precinct intake generally worked a very long day, particularly in the first few days of the experiment, when NDS staff members began interviewing at 6:30 a.m., went downtown to court for arraignments beginning around 5 p.m. and stayed in court until the last of that

limit the city was attempting to adhere to as a result of litigation involving the city's extremely long pre-arraignment delays. This was to ensure that NDS in no way slowed down the controversial arrest-to-arraignment process. It was assumed that arraignments for NDS clients identified in the precinct booking project would begin at 5 p.m. on the day of the precinct interview, and therefore be within the court-mandated 24-hour period. Therefore, anyone arrested before 5 p.m. the previous day was excluded from NDS intake. The city's eagerness to cooperate with the NDS precinct-based assignment experiment partially rested on this concern with controlling pre-arraignment delays wherever possible.

¹³ There were also benefits for defendants. Because defense counsel is not typically assigned until the defendant arrives at the courthouse for arraignment, judges must often wait up to an hour at the opening of court for attorneys to interview the first defendants to arrive and get arraignment started. Because NDS clients already had counsel assigned and were interviewed, they could be placed first in the queue and arraigned while other attorneys interviewed newly assigned clients.

day's cases was arraigned. This problem was solved by moving interviewing to 8:30. In addition, NDS staff considered instituting an afternoon intake shift, because of some senior managers' concerns about ways to increase the NDS caseload more rapidly.

To help sort out the logistics of intake, NDS also requested that CJA generate data that would demonstrate where NDS-eligible arrest cases were booked (uptown or downtown) by day of the week and time of day (7:01 p.m. to 4 a.m.; 4:01 a.m. to noon; 12:01 p.m. to 7 p.m.). The 7 p.m. to 4 a.m. time slot was of particular interest to NDS during the early days of the precinct-based intake experiment, when it was believed that intake would be limited to this period. Arrest data for October 1990, provided by CJA at the end of February 1991, demonstrated that that time period did in fact produce a large proportion of arrests (48%) involving catchment area residents.

However, those data also showed that 61 percent of NDS-eligible cases were interviewed by CJA downtown at Central Booking, not uptown at the precincts: 55 percent (566) of the arraigned cases involving residents of the six original NDS zip codes, and 71 percent (381) of the cases involving residents of the two additional NDS zip codes were interviewed downtown.

This experiment also raised some more general issues for NDS about the difficulty of early intervention when that intervention is dependent upon the criminal justice system for case assignment, rather than upon direct retention by clients. Two separate incidents in the first month of the precinct-based intake experiment led the District Attorney's office to withdraw its agreement to cooperate in the arrangement. In one incident, an NDS attorney, at the invitation of a precinct police officer, informed an assistant district attorney over the video hook-up that he was representing a robbery suspect who should not, therefore, be questioned without counsel. The interchange was overheard by the suspect's mother, who had been escorted to the precinct by an NDS team member. According to one senior manager, the police got upset about one aspect of the incident and the DA about another -- the propriety of someone other than the DA using the video hook-up.

Apparently, the mother, at that point, chose not to speak to the police. The police...anticipated [that] the mother...was going to come in and give them the name of co-perpetrators, which the mother then chose not to do... I don't think the attorney was questioning cops. I don't believe the attorney did anything but represent his client in the manner that he's supposed to... But it's [also] now raised questions...[in the District Attorney's office about] why the defense attorney got on the video hook up....

A second incident, in the beginning of January, raised even more questions. A case involving the rape of a minor had been mistakenly assigned to NDS at the precinct. (The case should have been deemed inappropriate for processing over the video hook-up because of the type and seriousness of the allegations by precinct personnel and ADA's; the defendant, therefore, should have been taken downtown for booking, making the case ineligible for precinct assignment to NDS.) Because of the error, the case was assigned to NDS after police had finished with the defendant; NDS then interviewed the defendant. Later that day, after the complaint had been drawn by the District Attorney's office, an ADA pulled the defendant out of the arraignment queue and began his own interrogation. This ADA was apparently unaware that the defendant was already represented by NDS, although NDS had faxed this information to the DA's complaint room. The defendant made some inculpatory statements at that interview, but upon learning of counsel's prior involvement, the ADA agreed that the statement could not be used in the government's case against the defendant.

This incident proved fatal, according to a senior NDS manager. The District Attorney requested that NDS precinct-based intake be suspended. According to one senior manager, this was because the DA wanted assignment only after the complaint had been completed. To keep the defendant in the precinct that long, however, would result in increased and not decreased pre-arraignment delays. At a meeting in mid-January, representatives of the various parties cooperating in the NDS precinct intake experiment (the Deputy Mayor for Public Safety, the District Attorney, the New York City Police Department, the Department of Correction) agreed to this suspension.

According to the NDS managers interviewed, the debate about precinct-based case assignment surfaced a number of issues. Some management staff framed these issues in structural terms (timing and location): the process gave NDS access to clients before the criminal complaint had been drawn up, and the 32nd precinct setting placed defense attorneys in proximity with the video hook-up used by prosecutors, police and civilian complaining witnesses in criminal cases.

Another senior NDS manager defined the underlying problem in terms of conflicting criminal justice system interests:

The [system] has an interest in treating its citizens accused of crime fairly, and some component of that "fairly" means "the same whether they're rich or poor." That's a relatively unpowerful interest in the way that the system gets put together, but it is a legitimate and articulable ...interest... There is a [system] interest in getting people to confess to crimes, so that they can be successfully prosecuted. And there is a(n)...interest in an efficient system that draws as few resources as possible to do justice. Those interests aren't necessarily compatible in any one particular program. This program (NDS) serves two of those three interests... It serves an economic interest, an efficiency interest...and it serves a fairness interest. It does not serve a conviction interest.

This respondent explained that the unique feature of NDS' precinct-based intake arrangement -- the assignment of counsel before arraignment -- reduces the disparity between indigent and non-indigent defendants, a factor that appealed to many at NDS:

There is a tremendous unfairness in the way the system works now, which is that by law you have a right to an appointed lawyer as soon as you're in front of a judge. However, you also have a right to use your own lawyer, if you've got one, from the moment of arrest. So there is this built-in disparity. The city is under no constitutional, legal obligation to give you a free lawyer [at the precinct stage], but if you have a lawyer they have to let you use your lawyer in that brief period of time. In most jurisdictions, that period of time is measured in minutes or hours, so it's not a big issue. In this city it's 24 to 72 hours. It's unbelievable. So that actually becomes quite a big fairness issue. [Emphasis added.]

Although NDS suspended precinct-based intake, it continued to explore a variety of ways to enhance the efficiency of courthouse-based assignment. One of the new approaches

at the time, suggested by the District Attorney's office, was what some NDS managers call "dungeon duty" -- attempting to reproduce the precinct-based process in the courthouse. Instead of waiting until assignment at arraignment, NDS was to get eligible cases identified by CJA at Central Booking (located in the basement pens), call the DA's complaint room to see if the complaint was drawn, and then interview the client before the defendant was brought up to the courtroom for arraignment. Administrative difficulties abound in this process, according to the NDS managers interviewed -- the lack of accessible interview space, reduced efficiency, reduced time for pre-arraignment investigation, increased distance between team members when assigning community workers to conduct investigations uptown. According to interviews,

Even if the defendants are downtown and NDS is there to interview them, they still have to wait until the complaints are done. They call the DA at around 10:30 to see which complaints are done. It may happen that they wait on a complaint until 2:00 or 3:00 in the afternoon, even though the DA has promised that they'll all get done by noon. Corrections will only let NDS stay around in the pens until 3:00....

Whereas before, NDS would have completed an interview with a client by 10:00, reconvened at the office to investigate by 10:30, and then met again at court at 5:00, now the attorneys are downtown, and the investigators are uptown. [Fieldnotes]

In short, there were too many agencies involved according to NDS staff who were interviewed, and the "dungeon" process collapsed because of its own internal complexity.

Through the end of February, NDS continued to develop procedures to expedite courthouse intake, but institutional intake was not keeping up with expectations because of the difficulties noted previously about NDS' inability to find a way to overcome the problem of there being no single point -- and no gatekeeper -- where and when all cases are assigned to institutional defenders. Nevertheless, the data supplied to NDS by CJA at the end of February (see Footnote 12, above) indicated that courthouse intake should generate a sufficient caseload if NDS could deploy its staff more efficiently. The CJA data was a

breakthrough, according to NDS managers, because it facilitated their efforts to identify shifts on particular days of the week that would be most productive.¹⁴

D. Central Program Components

1. Community-Based Defense Service

The rationale for community-based defense. Although the senior managers interviewed all strongly believed that the community-based component of NDS defense services was central to its activities, their views on exactly how NDS' relationship to the community affected its goals differed in some ways. The obvious points of agreement concerned the organization's physical location in the community. While defender officers located near the courthouse in lower Manhattan can constitute a disincentive to conducting investigations out in the community, staff working out of offices located where their clients live (often where crimes are alleged to have occurred) have increased ease of access, familiarity with locations and enhanced contacts with potential witnesses that can clearly improve investigations. As one NDS manager put it:

For investigative purposes, you'll know a lot more about that neighborhood over time than anybody else will... (T)here's specific corners, there's specific cops... You may be able to develop alternatives to incarceration programs in the neighborhood, which are used time and again. You may develop quid pro quos with people for services they give to your client. The ability to work in a reasonable geographic area enhances all kinds of opportunities.

Furthermore, all those interviewed agreed that enhanced knowledge of the client's community is important to developing good defense strategies in specific cases:

The quality of representation, according to --, does not merely depend on knowledge of the system and the law, but also on knowledge of the client and his/her world. You can use the knowledge of this world by "bringing it into the

¹⁴ Those data show that, in October 1990, there was an average of 52 arrests per day of residents of the eight NDS zip codes (34 per day for the original six zip codes); in mid-week, these numbers are even higher. Yet a number of potentially eligible cases were being lost to NDS because they come in on shifts that the relatively small NDS staff was not covering.

process, whether it's by bringing people into court to testify, or explaining a person's problem or circumstances to a reluctant DA." [Fieldnotes.]

These senior NDS managers also believed strongly that the community base would enhance the quality of attorney-client relationships over the long-term: "Given the recidivism rate [see Section IV], you will see the same client over and over again. You will be that person's criminal attorney for life, or for some extended period of time." As another NDS manager pointed out, NDS' location in the catchment area would also increase the frequency of attorney-client contacts because clients would initiate more of them:

It's not that [the NDS office is] closer, it's not that it costs a token to go downtown, and it doesn't cost a token to go to the office... You may have to take a bus...from 145th to 125th, or take a subway...from 145th down to Chambers Street. But, you'll do the first and you won't do the second if you just want to have a chat with your lawyer.¹⁵

Internal debates about the nature of community-based defense. Despite these uniformities in perspective among the senior managers interviewed, there was also debate among them about other dimension of what being "community-based" meant and, therefore, how NDS should operate. These debates appear to have focused on three issues: hiring strategies; client empowerment and high quality representation; and community empowerment.

In the summer of 1990, when NDS senior staff were in the process of hiring other staff and team members, issues arose that were related, at least in part, to defining the nature of community-based representation at NDS. Ideally, candidates for most -- possibly, all -- staff positions at NDS should have a combination of skills: demonstrated competence in indigent defense work and ties to the catchment area or a demonstrated commitment to working closely in or with the communities it contains. According to interviews, the hiring

¹⁵ Research literature over the years has repeatedly found that community residents are more likely to use service organizations located in their neighborhoods than more distant "downtown" service providers. See, for example, Sullivan, 1989; Hillsman and Sadd, 1979.

process not surprisingly focused attention on the way these skills -- described in the abstract -- were reflected in the backgrounds of specific candidates and on how to weigh and assess various strengths. The review of candidates raised questions about how to balance strong skills in organization and community-building, community involvement and demonstrated experience in "good lawyering". As one senior manager explained it,

The hiring process forced us into soul-searching...about who should join this office... (T)he whole question of who comes into the project defines what the project is: what its goals are, who we are, what we think is the appropriate type of person to work here, given the nature of the office. (The hiring process) became this struggle for what was the heart and soul of the office.

Subtler differences in the meaning of "community-based" defense were also central to this debate. One focus as concerned whether being a successful community-based defender office entailed reflecting the communit(ies) represented by that office (culturally, ethnically, etc.). A related issue concerned prior legal training and experience in defense work -- how much a successful community-based organization needed to draw upon those with extensive prior defense experience that had not been either community-based or team-based and how much it needed staff, committed to and experienced with these principles, who might have less defense experience in traditional organizations. As described by senior managers, the debate at NDS concerned the optimal mix of these qualities both within and across members of the organization.

One senior manager saw positions in this hiring debate as dividing the office according to the extent of staff member's prior local institutional defense experience. According to this member of senior management, prior LAS staff generally had less exposure to issues of community involvement and team structure, but were highly trained in traditional defense work and committed to "good lawyering" skills. Candidates with other types of legal and non-legal backgrounds, however, brought experience and skills in community outreach and collaborative professional work, but sometimes had less extensive training in client representation of the traditional sort.

These issues appear to move beyond debates about the actual and ideal composition of the staff and into questions about strategies for enhancing client empowerment and "good lawyering". How does a community-based defense organization improve attorney-client communications about how to defend the client and what outcomes to seek? The defense organization's links to its catchment area and its cultural bases should, in the words of one respondent, improve "understanding a client in his community." This, in turn, should empower the client by facilitating the process by which legal principles and strategies are translated into meaningful terms for clients.

One of the things you have to do is to give clients advice, and it's advice about choosing options, all of which are unpalatable... But the choice has to be the client's. Now you can describe to somebody, with infinite knowledge of how the system works, what those choices are. But your ability to communicate that effectively, so that it's heard, and heard in the way that you want it to be heard... depends on you knowing something about that person. The more you know about that person, their world, their context, the more -- that's probably just basic communication theory. But the fact is that there's a gulf between most lawyers and most clients.

To the extent that successful communication -- fostered by the community focus of the defender organization and the defenders themselves -- empowers clients, however, it raises questions for some senior managers about what constitutes high quality representation. This appears to be a question of process: how are conflicts about defense strategy or case outcome resolved when client and attorney disagree? As one senior manager put it:

...the bottom line is you're always trying to get the defendant no time or less time in jail. And the question is, is that simply a culturally-imposed notion of what's right for clients? [If the attorney knows] that the likelihood is that [the client is] going to get convicted, [how much should the attorney encourage the client to] take a plea and get less time in jail....

The role of community empowerment in a community-based defense organization also generated some discussion among NDS senior managers. While NDS is not an organization that will pursue class action litigation, there are various ways in which it can pursue individual representation that focuses on community issues. One NDS manager spoke of

"problem-solving" litigation in the interests of the community as a whole; another discussed somewhat broader forms of "affirmative litigation". One respondent contends that in the larger picture neighborhood-based representation makes most sense if it can "make [its] service fit the experience of conflict with the criminal justice system that clients have". In his view,

Because this program is designed to try and think from scratch (about) what it means to provide quality criminal defense services to poor people, you begin with a notion of, what is the experience about which poor people need representation by counsel? Conflict with the criminal justice system: what is that conflict? It doesn't really happen in a courtroom. Occasionally it does; mostly it happens in the neighborhoods. Mostly it's about the police. And so there is one...broad strategic view which says if the subject matter of the representation is the point of intersection between people and the police, you want to be as close to where that's happening as possible.

A hypothetical example offered by this respondent and condensed here illustrates the concept of affirmative litigation:

...a school teacher in the neighborhood will call NDS because she's been a witness for them, or because they have talked to her about one of her students. She may report that a bunch of her students are regularly harassed and searched on their way home from school. (In the future) NDS could file a civil suit against the police in a situation like this or follow up on an arrest resulting from these illegal searches. The point is, that they could get at the larger problem somehow.

While perspectives on what community-based representation can accomplish have been articulated by only a few senior managers interviewed, it is likely that there is a range of opinion at all levels of the organization about it. As research interviews continue, this important issue will be explored more fully.

Community outreach. Whatever debates are raised by senior managers about what a community-based defender service should be, without representation of catchment area residents, and especially without being "sufficiently felt to be the lawyers for the community", NDS can not be a fully community-based defender service. It is not surprising, therefore, that community outreach activities are viewed by the senior managers interviewed as central

to the organization's operations. It is also not surprising, however, that there is debate about how to conduct outreach.

Although all community outreach activities, regardless of their form, are fundamentally related to intake -- that is, getting NDS known in the community and, thereby, increasing the number and proportion of retained cases -- some forms of outreach have additional, if not separable, components. These include educational outreach, which may increase understanding within the community of defendants' rights to legal representation and political outreach, to establish links to community leaders who might provide political support for NDS.

Outreach activities that are directly intake-oriented include dissemination of NDS posters and leaflets; advertising; talks to community groups; specific efforts, targeting high-risk groups; and efforts to encourage clients to return after subsequent arrests. Responsibility for coordinating this form of outreach and deploying staff has recently been assumed, at least in part, by NDS team leaders. According to senior managers, this shift was in reaction to team leaders' concerns about increasing the NDS caseload more rapidly. In theory at least, this type of decentralized outreach should increase community contacts and knowledge of the community within individual teams as well.

The senior NDS managers believe NDS needs an aggressive program of intake-oriented outreach. As one described it:

--- goes out to Schomburg Plaza and talks to a tenant group, and says to (the) mothers, "Listen, don't just wait. Come into the office, if you come in on any given intake day between nine and five you will be assigned to a team. They will represent (you), they will be your lawyers, right? You'll have their card, you'll know who they are if somebody gets arrested...."

According to those interviewed, outreach of this type encourages a form of enrollment with the defender organization, a process some senior managers think will increase the frequency with which NDS is retained by community residents.

One of the debates about early outreach efforts, according to some senior managers, was whether talks to community groups (such as tenant organizations, church groups, schools) reached individuals who were likely to become NDS clients. As one person expressed it,

In the last round [of outreach], people were generally receptive to the idea. People took placards and cards and literature. We got some number of responses from people...[as a result]. Part of the difficulty of measuring the effects of outreach is that we obviously don't get to everybody in the community. The sort of people that would be potential clients may not be affiliated with any of the groups we go to see....

Other respondents, however, saw the community as a more seamless phenomenon. In this view, while typical members of a given group addressed may or may not get arrested with any frequency, their friends, families, neighbors and associates may need their services. The debate, therefore, appears to be about the nature of the community as well as about specific strategies for maximizing the impact of community outreach. In fact, NDS staff engaged in a variety of alternative outreach strategies, including outreach efforts targeted at parolees recently released to the Harlem area from State Prison (a sub-group likely to have need for NDS' services, given their recidivism rates and legal issues about parole revocation)¹⁶ as well as efforts targeting general groups of catchment area residents.

In these early months of full program operations, some senior managers interviewed expressed concern that aggressive intake-oriented outreach efforts had been "going slowly." One senior manager also expressed some concern about the assumption of outreach coordination efforts by team leaders:

It's hard to juggle outreach and case work. While the case work is not so heavy now, the way things work, you spend time getting ready for court, and when that's done, you want to relax. It takes a very special kind of energy to go do outreach work instead of relaxing.

¹⁶ Recent Vera research on state prison releasees returning to New York City on parole shows that 39 percent were rearrested within 12 months of release (Young *et al.*, 1991).

Nevertheless, much of the outreach is indeed done by the teams, whose members have made contacts with at least some elected officials, businesses, religious groups, local service providers, community boards, youth programs and tenants groups in the area.¹⁷ One senior manager, however, reported that there is some division within staff between those team members who defined defense work primarily in terms of case and trial preparation and those who saw defense work more broadly, in terms of the community-outreach and client-building functions. If so, community outreach may be an important issue for the future as NDS continues to experiment with how a team-based as well as a community-based organization is structured.

2. The Management Structure and Team Concept

NDS Management Structure. Defense teams are the central organizational unit of NDS. Since December 1990, there have been six teams operating at NDS, each of which includes a senior attorney, a mid-level attorney, a junior attorney, two community workers and an administrative assistant. Teams operate under the direction of the Executive Staff -- the Director of NDS, who is an Associate Director of the Vera Institute; the Project Director; the Chief Counsel, who is responsible for the integration of the criminal and civil practice; the Counsel for Technology and Appeals, who is responsible for the development of the local area computer network and issues involving criminal appeals; the Office Manager; and the Executive Administrative Assistant. The Executive Staff meets on a regular basis with team leaders. Together, this combined group of twelve -- executive staff and team leaders -- constitutes the senior staff of the office.¹⁸

¹⁷ To date, researchers have not established the frequency of these activities or determined who on the team is doing them.

¹⁸ In early March, NDS added a Chief of Social Work, who serves on the Executive Staff of the office.

Senior attorneys are the designated leaders of the teams. They coordinate the work of the team as a whole and also play both a training and a supervisory role in relation to the other attorneys on the team:

The senior is that team's manager, leader, supervisor. The juniors are just learning... They tag along until we just give them their own cases to do and then they supervise their work on those cases. They have primary responsibility for standing up in court, doing the interview. I think mid-levels are left somewhat more to their own devices because they're able to go into court to cover cases.

In addition, team leaders have a variety of roles on the senior staff:

They come in with three roles... One, they follow their conscience and their experience... So they're there to give...themselves to decisions and to deliberations. They're there as managers of the project, looking out for the project as a whole. And they're there representing an interest or a series of interests in their team. Maybe even a series of conflicting interests....

Team Concept and Structure. The team is the key organization unit of NDS because it handles the client caseload. Each day, a single team is responsible for handling new cases represented by the office, either through institutional assignment or retention by the client. The fact that the team and not an attorney represents a client is central to the NDS approach:

What we've attempted to do is to avoid the inefficiencies in this system of one attorney, one client. Now, we have a team of people who represent a client. They're not fungible, but any of their number could, on a given day, give advice to a client. I mean, non-lawyers can't give legal advice, but any one on the team could speak to a family, give information.

The team structure provides great potential for the flexible deployment of staff. For example, during the experiment with precinct-based intake, NDS managers envisioned various ways of deploying attorneys on a given team to promote maximum efficiency. For example, at intake:

In theory you could have the early morning duty covered by two attorneys, who could probably conduct about eight interviews in a day. Or you could have the day split into a morning and an afternoon shift. Either way, attorneys would only have to do this early interview shift once or twice a month, and the duty would be rotated (among teams).

NDS managers reported that NDS provides far more training to non-lawyer personnel (community workers and administrative assistants) than other public defender organizations they had seen operating, including the LAS. Community workers are responsible for investigative functions at NDS, although, in theory at least, their role is expected to be substantially broader.

To the extent that they are investigators, the role of the community worker is frequently defined by NDS managers in contrast to their experience of the role played by staff investigators at LAS and elsewhere. According to some NDS managers, lawyers at larger, more bureaucratic defender organizations typically file a formal request for an investigative interview that is passed on to either a pool of investigators or an investigator who is assigned to a complex of lawyers. The investigator gets a case file and conducts an interview:

They would find "Mary Smith." If she wasn't around, they'd slip their card under her door. And they'd come back and if the lawyer said, ask Mary Smith if she saw the robbery...they'd say, Mary Smith saw the robbery. What else did Mary Smith say? And they answered, well, you asked me to find out if Mary Smith saw the robbery. I asked her the question and I came back... So it was always a sense of it being piecework.

In contrast, NDS community workers are expected to be much more involved in the specific case and to understand the overall purpose of investigative interviews in that case. In this sense, then, the role of the community worker is one of the most interesting innovations in the NDS operational structure. More than investigators, they are also paralegals and social service coordinators for the teams. As a result, NDS community workers are involved in the beginning of a case, sit in on interviews, go to court with the lawyers and get to know the clients. According to NDS senior managers:

It feels like it's their case and their client. It's their team's client, as opposed to a legal aid investigator who's given an investigation sheet.

... (T)hey also know more about the case, and they can think with you theoretically about the case. So they may want to take four statements from the complaining witness, but they take those four statements so that they get

four different statements, leading to impeachment, not because they forgot to ask certain questions the first time around. [Fieldnotes.]

At legal aid, when a person has finished their work, they're done until their next assignment. They aren't in a position of making work for themselves. In the NDS team, the hope is that people can in fact make work for themselves.

In addition to their investigative functions, it is anticipated that NDS community workers will be integrally involved in increasing the overall efficiency of client representation once NDS staff are operating at full capacity. It is expected that community workers will, in the words of one senior manager, "do a lot of the running and jockeying and checking if pieces are together":

...[You could have a] team member come down, you know, organize the family, make sure the defendant's there, run out and make phone (calls) and find people if they're not there...essentially, package each case for a lawyer in a court. See where it is, run around to each court, get the number of each case off the calendar, find out where it is, sign in for the lawyer if necessary...

Future interviews will begin to focus more specifically on the different ways the six teams are implementing team representation and on what roles evolve, particularly for the community workers. However, it is clear that there are differences among the senior managers interviewed as to what this role ought to be. These differences appear limited to different views about community outreach -- the extent to which it is everyone's job as part of a community-based defense organization or the job of specific people or positions within the organization. According to one member of the management staff,

The original term was and is "community worker." This seemed to promise more than just investigations. They were supposed to be a bridge to the community. This was the view particularly among white, (former) legal aid lawyers. They felt that they were being dragged into community outreach and organizing by the failure of this community worker position to live up to its name.

Thus, while the team concept, in general, was seen as permitting a broader conception of individual roles than is typical in other public defense organizations, the emergence of these new roles is an evolutionary process, still in the early stages of development.

Team Operations. These early interviews with a small number of senior managers indicated clearly that the teams are still feeling their way. As one manager pointed out,

Nobody came in with a skill in running a team as opposed to being in individual practice. And so...nobody has a clue exactly how to do it, and I think everybody's getting a different sense of how they can distribute labor, divide work, share work within each team.

During the early weeks of full program operations, these senior managers were not sure that client representation at NDS differed substantially from more traditional modes of attorney-client relationships:

According to --, right now, no one is comfortable with the idea of doing the interviews in shifts, or indeed with the team concept in general. Right now, attorneys want to interview a client and stick with that client through the life of the case. [Fieldnotes.]

Nevertheless, they generally felt that this was beginning to change. Some teams were involving community workers in non-investigative activities more than other teams, according to one senior manager:

Well, some teams rely more on community workers, whether that's relying more, trusting more, feeling more comfortable doing it, being less scrupulous about it... Some people believe only a lawyer should be at the other end of the phone. Some people feel a community worker could be on the other end of the phone.

The NDS managers interviewed all suggested that the potential for ability of the team structure to increase the efficiency of case processing was enhanced by the team's regular use of technology. As one saw it,

(T)echnologies are there to make it more efficient. Communication by beepers. The phone system. How would we have 24 hour, 7 day coverage, which goes far beyond what any other defender office does? We do that through a technological device which is not particularly onerous. In a legal aid office, you'd have to have a lawyer at a switchboard all night. [Fieldnotes.]

Yet all those interviewed expressed concerns about how the teams were operating. One manager noted concern that, as yet, the decisions and policies of senior staff were not always fully communicated to other team members:

...team leaders don't always talk to their teams about decisions before and after they are made. Team leaders are the representatives of their teams in the senior staff meetings. They can fail in this regard by not conferring with their teams, or by failing to participate at the senior staff meetings.

He also voiced some concern that the team model of commitment to role expansion may affect staff willingness to undertake routine operations appropriate to their basic roles:

(Y)ou could...encourage people to break down a division of labor, so that an AA didn't just type. On the other hand, an AA had to be able to type..., answer the phone..., organize administratively a team. So, a division of labor exists. I mean, when somebody simply hears we're going to break down the division of labor, so that people get to do more things,... And then suddenly people say, "Why are we having to do these more traditional jobs?" It was never said you weren't going to do those roles. It was said we will encourage you to do other things as well.

Overall management issues. As in any new organization, issues arose during the first few months of NDS' full operations, about the overall management structure and about how decisions affecting the office as a whole were to be made. Some senior managers reported that team leaders were concerned about the perceived hierarchical nature of decision-making at NDS." Yet, to some extent, this issue is also perceived to be a result of some senior managers' views of NDS as both experimental in structure and participatory in operations. As one senior manager said,

What I think, and maybe this is a fairly cynical view, is that, because in this office we have suggested to people that there is an ability to participate in decision making...that anything that's pulled back from there or more highly structured is seen as an infringement upon that.

Yet it probably should not be surprising for an organization that is team-based and whose primary work is litigation that the locus of decision-making within the agency was controversial, especially while the organization's overall structure was still unfolding and caseloads were still sparse. As one respondent explained, "Nobody has any...agreement about any structure in this place. You tell me a position, and I will tell you people fighting about what is wrong with it."

Apparently, at least some senior NDS managers had not anticipated that this structural issue would prove to be quite so problematic. As one put it,

I guess I'm sort of amazed at how difficult it's turning out to merge different people's images of decision-making. And how much the...positions they are taking are those that enable them to in fact have the greatest influence, regardless of...the ideological cast of what they're saying....

It appears to some senior managers, therefore, that the office is divided between those for whom the consensus model is central to the NDS structure and those for whom day-to-day operations are far more important than structural issues:

Some people want strong management: "I want to know what the hierarchy is. Just tell me it, right. Stop bullshitting with me, stop pretending it's a consensus model. Let's just do it. It'll be more efficient; we'll get some shit done." Other people say: "I want a consensus model for decision making. I want to have this input."

3. Client-Centered Representation

NDS differs from other providers of criminal defense services for indigent populations in its commitment to "client-centered representation." This means representing clients in all criminal cases (if there is more than one) and in non-criminal cases (e.g., Housing Court, the Immigration and Naturalization Service) if they are collateral to the criminal case that brings them to NDS.

This strategy is intended first to improve the efficiency of the justice system by consolidating the work that is now typically done by more than one lawyer. Secondly, it should improve service to the defendant by permitting a comprehensive strategy to be developed that takes account of all the relevant criminal and civil matters. Third, in at least some cases, the process of defending clients in a civil forum may enhance the criminal defense (e.g., by expanding the discovery process). As one respondent put it: "Can you leverage the one against the other? Can you help your criminal case by using the immigration case?" Finally, by representing clients in salient ancillary matters, one NDS senior manager believes their work "fosters the sense that NDS lawyers are 'their lawyer,' rather than someone assigned to them or dumped on them."

NDS managers also indicate that civil cases will be referred to other providers of legal services, if the civil matter is not associated with a criminal case. One respondent noted, however, that this is not always easy:

Generally on civil matters we attempt to refer them to an existing agency. We're not qualified to give out civil legal advice. The problem is that there aren't a lot of places to refer people. Hopefully we will develop a more sophisticated civil referral network, because we certainly don't have it at this point. We hope to have relationships with other legal service providers who will take these calls and clients that we refer.

Civil matters that are related to a criminal case but are perceived to be very complex may also be co-counseled with outside attorneys interested in engaging in pro bono representation:

This would happen most often in the area of police misconduct. Perhaps also housing issues. NDS has talked with...some other firms about issues of complex litigation where NDS doesn't necessarily have the in-house experience... With the larger firms, just having the name of the firm on the case would help. Also, using the paralegal services of a large firm, going through documents and indexing, and preparing for depositions and interrogatories. If the current economic climate produces substantial down time at certain large firms, these firms might want to use pro bono work to give their new associates trial or civil litigation experience. [Fieldnotes.]

Although the number of collateral cases identified in the early months of full program operations was small and is likely to remain small, NDS senior managers expect that the ability of staff to identify collateral civil matters in NDS cases will increase with time and experience:

If you ask the right questions, according to ---, you'll get collateral cases. If you're a lawyer who often does immigration litigation, you can structure an interview to elicit those kinds of information. Then you'll generate more collateral work. We're not at that point yet. [Fieldnotes.]

4. Time and Cost Issues: Increasing the Efficiency of the Criminal Defense Process NDS Litigation Support Network (LSN)

The unique features of NDS discussed above -- being community-based, team-based and client-centered -- contribute to NDS' expectations of efficiency. One of the central ways

in which NDS expects to promote these efficiencies, however, is through the continuing development of software for the agency's Litigation Support Network (LSN). The potential of this local area computer network is significant, if use of the system is high. All team members at NDS have computers at their workstations and the senior managers interviewed say they are attempting to develop the expectation that all staff will use them regularly:

Everybody is using it more than at other places... Basically, giving everybody a terminal makes a huge difference. We have tried as much as possible to design the agency to integrate it with automation. It's an assumption that you're going to use the computer, just as its an assumption that you're going to use the telephone.

Just the fact that everyone is supposed to be entering the information into the computer means that it's easier for the whole team to know what's going on in the case. The problem of its being buried in a paper file under the control of one person is solved.

A calendaring system on the computer network is designed to permit team members to know the schedules of other team members. The system is designed to ensure that scheduled events (appearances, filings) happen on schedule. It is also designed to allow team leaders to check the status of case work regularly (crime scene visits, witness interviews, follow-up interviews, etc.).¹⁹

The LSN system is also designed to provide comprehensive information on the nature of the NDS client base and caseload, as well as on case processing and case outcomes. Over time, it is expected that the computerized information system will permit

¹⁹During the research effort to conduct quantitative analyses of NDS cases, discussed in the following section, it became clear that data entry at NDS was not done fully during the early months of program operations. Because of feedback processes between researchers, computer staff and NDS central management, however, concerning data elements that were missing or new data elements that would be valuable for research purposes, there has been recent improvement in the quality of available data. It is expected that, as teams begin to function more integrally as teams, the internal demand for complete files will increase, and data entry will become more complete.

NDS staff to review prior NDS interactions with specific judges, prosecutors, witnesses, police officers, etc.:

There are all sorts of uses for the data that aren't yet on line, but that data is going in... A lot of the uses for the data are system-wide -- for example, telling you whether NDS has dealt with a witness a year or two ago in a different team.[Fieldnotes.]

NDS management staff anticipate drawing upon the LSN system not only to inform themselves of prior interactions with individuals, but also in making statistical use of case-level information to analyze patterns of events (e.g., "to track a particular arrest pattern at a particular precinct").²⁰

The computer system will also provide broad access to "the legal expertise of the office" through the inclusion of a motion bank and a set of case law summaries, drawn from the New York Law Journal on a daily basis. There are also plans to develop systems to expedite the writing of motions:

NDS is also going to be building something called the automated practice system, which will ask attorneys questions about cases, and construct a first draft of a motion document from the answers to those questions. This will mean that the people who are putting data in will immediately see those data become useful to them in their work. This system will create the pleadings and how the case is handled. [Fieldnotes.]

Other Efficiency Issues. While efficiency is a key operating principle of NDS, NDS management staff who were interviewed acknowledge that NDS does not share some of the inherent efficiencies available to larger-scale defender services. For example,

The biggest time loser is court. The fact is that with a high volume caseload and an agreement to do institutional coverage, you maximize the efficiency of the time you spend in court, because you cover a large number of cases. Given that our teams have slightly lower caseloads than individual lawyers in Legal Aid, we have fewer cases in court, and they're more widely dispersed.

²⁰Such an approach requires a substantial number of cases of a given type. It is unlikely that NDS staff could conduct such analyses for some time.

The problem is that (the) Legal Aid schedule, I believe, has in some sense dovetailed with the D.A. schedule, so that the same complex in Legal Aid will work the same arraignment shift as the same trial bureau from the D.A.'s office. So every week, they're picking up the same cases, going to the same parts and working for the same judges. So our team may have picked up six cases, one that goes into a particular 'wheel', but when they work next week, they're going to work cases that go into a different 'wheel.'

Because NDS' cases are not easily "tracked" together, it may be difficult for NDS attorneys to group courthouse appearances in ways that promote efficiency. This issue will be explored in future research.

In interviews, NDS management staff also note that NDS' greater investment in case investigation and preparation than other defense providers may involve a greater time commitment as well:

...(I)nvestigative work,...I am thoroughly sure we do some exponential number [higher] in comparison to what any other defender does... Number one: we do it, we do it early, we do it thoroughly. The fact is that we perhaps lose time because we do it when other people don't. But betwixt the desire to do it and the accomplishment of the deed, we save an enormous amount of time.

To the extent that we end up providing aspects of representation which are critical to the preparation of a case, and which we do thoroughly and fairly efficiently, we're still going to take more time because they're not being done elsewhere. Period.

Yet the management staff interviewed also believe that the time invested in early investigation will ultimately promote both quality representation and efficiency. As one manager put it,

...If one looked at the amount of investigative time on a serious case -- given that we get in early, nail down information early, and do it in a fairly concentrated period,...the outcomes will change... A case that's investigated before arraignment is probably going to have a different life than a case...where the investigation happens ten weeks later.

Respondents also point out that early preparation should permit NDS to make better decisions at strategic points:

According to ---, all of the issues surrounding neighborhood-based representation (investigation, client drop-ins, etc.) allow NDS to work cases more quickly. This doesn't mean that they will reach disposition sooner, because that's a strategic decision... Because they have more information earlier, they are in a position to make better strategic decisions earlier. [Fieldnotes.]

It is inevitable that having this information earlier will allow some cases to be disposed of more quickly, and with a more favorable outcome for the client. All of these aspects of neighborhood-based representation implicate speedier and higher-quality representation. Getting in earlier and being able to start real work on a case faster is the real selling point to the city. [Fieldnotes.]

Early case involvement also enhances the likelihood of pre-trial release which, it is argued, can affect case outcomes, although its influence on the speed of case processing is less clear. When asked whether NDS' cases are moving faster than expected, this senior manager thought so.

My guess is yes. Many of our clients are out on bail when they normally wouldn't be. That has an up side and a down side. Usually a client out on bail, there's no reason not to delay. Delay is often in a client's best interest. If your case is prepared and your client is out, you're in the catbird's seat. You're in a position to take the best plea opportunity. The witness dies, it becomes less critical, the case goes on and every time you go to court, somebody's trying to settle. As cases get older, the edge comes off. It doesn't mean that time to disposition will be quicker. But there's a good chance that you will more quickly jump on the appropriate opportunities to move the case along.

In general, those senior managers who were interviewed were convinced that their approach could affect the overall quality of criminal defense, the speed of pretrial release and the outcomes of clients' cases. Management staff thought it possible that the efficiencies produced by the neighborhood-base and by technological innovation (computers, beepers, vans) might compensate for any additional work (detailed neighborhood-based investigations, representation in collateral cases) that NDS performs. Yet, in spite of the fact that these senior staff generally believed that NDS would investigate and prepare cases more efficiently than large-scale institutional defense providers, they were somewhat

ambivalent about whether NDS might have any impact on average time to disposition, because of the perceived strategic value of delay in the criminal defense process.

* * *

The central components that make NDS potentially unique -- its community-base, its team structure, and its client-centered representation -- are designed to be mutually reinforcing. To the extent that the team structure ensures continuity of representation for clients within and across cases, it promotes "client-centered" representation. In its efforts to represent appropriate clients in civil forums and to pursue "problem-solving" criminal litigation, NDS may provide services to clients and the community that enhance the agency's attempt to become a community resource.

Yet NDS has not been in operation long enough to determine whether these expected interactions will occur. In the coming months, research staff will explore the perceptions of team leaders and members about the extent to which the goals, objectives and expectations of the few senior NDS managers focused on in this report have been operationalized.

IV. MANHATTAN ARRESTS AND NDS CASES: CASE PROCESSING IN CRIMINAL AND SUPREME COURT

A. Introduction

NDS draws its clients from residents of its catchment area in Northern Manhattan, most of whom are arrested on criminal cases in that borough. For this early analysis of its cases, we have constructed a database (see Appendix A) that is divided into four groups for descriptive purposes. First we shall look at all Manhattan arrests during the period of July 1, 1990 and November 30, 1990 when NDS was running its pilot operations. We shall then look at those Manhattan residents arrested in Manhattan, and then specifically NDS catchment area residents arrested in Manhattan. Finally, we look at NDS clients arrested in Manhattan during this period. The arrests (and arrestees) contained in these four samples are described below, and some basic (non-statistical) comparisons are made.

In future time-based samples (starting in the Spring of 1991), statistical analyses will be carried out that will compare NDS cases to eligible cases within the target area that NDS did not represent. NDS cases will also be compared to a matched sample of Manhattan cases drawn from official databases. Such analyses were not possible using the samples drawn for the current report because NDS intake of new cases during the pilot period was small, producing only 65 criminal cases between July and November. Nevertheless, the data which follow provide a fairly comprehensive view of the types of cases in the NDS pool and early case processing patterns.

B. Description of the Arrests and Arrestees

1. Manhattan Arrests

During the five month sample period, there were 45,457 arrests in Manhattan. Of these 36,088 were summary arrests (individuals taken into police custody) and 9,369 persons who received citations or desk appearance tickets (DATs, 21%). Five percent (2,249) of these arrests were not docketed; they represent arrests either voided by the police or cases the district attorney's office declined to prosecute. In addition to the non-docketed cases,

another 3,353 cases were docketed, but not arraigned; most of these were persons with DATs who failed to appear in court on the scheduled date for their first appearance.

Just over half (54%) of the people arrested in Manhattan were black, 18% were white, and 27% Hispanic. Eighty-four percent of the arrestees were male, and their median age was 28. Nearly three-quarters (70%) of them had been arrested before; 29% had one or more prior felony convictions and 44% had one or more prior misdemeanor convictions.

Forty-four percent of the arrests were on felony charges, 54% misdemeanors, and 2% other. (See Table IV-1 for details.) The most common crime types were drugs (28%) and property crimes (21%). (See Table IV-2 for details.) Of the 30,569 summary arrests (85% of the total summary arrests in the sample) that contained data on the CJA stamp, 17% had verified community ties and were recommended for ROR and another 15% qualified for ROR but information was unverified.¹ The remaining 69% received no recommendation, either because of insufficient community ties (35%), or the existence of a bench warrant (21%), or a residence outside New York City (6%), or other problems (7%). Half of the defendants (whose cases continued past arraignment and for whom data on release status were available, N=26,241) were released on recognizance at arraignment (53%) and 44% had bail set but did not make bail; the remaining 3% were either remanded or made bail. Nineteen percent of the cases were transferred to another court, most to Manhattan Supreme Court (15%) and the remainder to another borough.

¹ CJA interviews only those individuals who are arrested and taken into police custody; it does not interview individuals who receive DATs or are arrested on prostitution charges.

Table IV-1
ALL MANHATTAN ARRESTS
 ARREST CHARGES: SEVERITY

	<u>%</u>	<u>Number</u>
A Felony	2	743
B Felony	16	7064
C Felony	6	2754
D Felony	14	6216
E Felony	6	2427
A Misdemeanor	45	19616
B Misdemeanor	7	3292
Uncl. Misd.	1	541
Violation	2	649
Infraction	-	<u>122</u>
TOTAL	100%	43424 ²

Table IV-2
ALL MANHATTAN ARRESTS
 ARREST CHARGES: TYPE

	<u>%</u>	<u>Number</u>
Crime against person	11	4741
Property and Person	8	3620
Weapons	3	1310
Property	21	9240
Drugs	28	12132
Sex	7	2844
Forgery	14	6182
Misconduct	4	1754
Obstruction of Justice	2	764
VTL	<u>2</u>	<u>720</u>
TOTAL	100%	43,307

² Table Ns will not always equal the full sample size because of data elements missing from the original computerized records.

Thirty-five percent of the cases that remained in Manhattan Criminal Court had not been disposed at the time of data collection (January 15, 1991); 47% had pled guilty, 11% were dismissed, and 6% received an ACD. The most common sentences received in Criminal Court were imprisonment (4%); conditional discharge, either alone (3%) or combined with a fine and/or imprisonment (less than one percent); and fine or imprisonment (1%).³

While 6554 cases were transferred to Supreme Court for felony prosecution, disposition data were available on only 1689, suggesting that about a quarter of the cases were disposed. Less than one percent of the cases disposed in Supreme Court were dismissed or received an acquittal; almost all pled guilty (93%) or were tried and found guilty (8 cases). Of the 1109 cases for which sentencing data were available, 73% received sentences of imprisonment, 14% probation, and 11% combined sentences of prison and probation.

2. Manhattan Residents

Most individuals arrested in Manhattan don't live there; however, forty-five percent of the arrests in Manhattan between July 1 and November 30, 1990 were of Manhattan residents (N=20,245). The arrestees who lived in Manhattan did not differ substantially from the Manhattan arrestees as a whole. There was a slightly higher proportion of Hispanics among the Manhattan residents (34% as compared to 27%). Their median age was 30 (as compared to 28 for the sample as a whole). With regard to prior record, there was no difference between the subsample of Manhattan residents and the Manhattan arrestee sample as a whole. The Manhattan residents seemed to be arrested on slightly more serious charges, 52% felonies as compared to 44% in the sample as a whole. There

³ The percentages presented here are of the entire docketed dataset; i.e., there are 45,371 cases represented, including open cases, those transferred, dismissed or acquitted, and cases that received a conviction but were not yet sentenced. Criminal Court sentencing data were available on eight percent of the cases (N=3877), and of these, 42% received jail sentences, 38% conditional discharges, 10% fine or imprisonment, 3% fines, 3% probation, and the remaining 4% received combination sentences.

was also a slightly higher incidence of drug arrests among Manhattan residents than in the sample as a whole, 34% as compared to 28%. Court processing and outcomes were the same for both groups. (See Appendix B for detailed data on the subsample of Manhattan residents.)

3. NDS Catchment Area Residents

Thirteen percent of the arrests in Manhattan between July 1 and November 30, 1990 were of residents of the six zip codes comprising the original NDS catchment area (N=5,951).⁴ These arrestees represent potential NDS clients and are not substantially different from the other arrestees who live in Manhattan. The major difference is that there is a higher proportion of Black arrestees (81%) in the NDS catchment area than in Manhattan as a whole (51%). Their median age was 29 (as compared to 30 for all Manhattan residents and 28 for the sample as a whole). Their arrest charges were very similar, except that a slightly higher percentage of the Manhattan residents than those in the NDS catchment area were arrested on drug charges (34% vs. 30%). (See Appendix C.)

As described in Section III, the NDS catchment area was expanded to include East Harlem in January 1991. While the analyses presented here are limited to the original catchment area (because of the period being studied), the effect of this expansion would be to increase the potential client pool by more than half (52%), from 5,951 to 9,026.⁵ The ethnic composition of the expanded catchment area is somewhat different from the original area, with a larger percentage of Hispanics (24%, as compared to 15%) and a smaller

⁴ If this five month period is reflective of an entire calendar year, the annual arrest volume would be 14,282. For NDS to have an annual caseload of between 4,000 and 6,000 new cases, they would have to represent between 28% and 42% of this population of arrestees from the original catchment area.

⁵ This expands the annualized pool to about 21,662; to have an annual caseload of 4,000 to 6,000 cases, NDS would have to represent between 18% and 28% of this population of arrestees from its expanded catchment area.

percentage of blacks (70% as compared to 81%). There were no other substantial differences between the original catchment area and the expanded area; the arrests were on similar charges and the defendants had similar prior records.

4. NDS Clients

There were 61 clients with records in the NDS Litigation Support Network who were arrested between July and November of 1990; four of these clients had two arrests during the time period, for a total of 65 arrests. Furthermore, only 43 of the 65 arrests appear in the CJA database used to examine all Manhattan arrests (the reasons for this are explained below). Thus, the results obtained from the analysis of this sample of 43 is not representative of the current NDS caseload; it is also not representative of the July to November cases (with data on only two-thirds of the cases, the total caseload could be quite different from the 43 in the CJA database). Therefore, the results presented below should be interpreted with the caution normally applied to very small samples and should not be considered generalizable to the current NDS cases.⁶

The two most frequent sources of referral to NDS (during the study period) were assignment at arraignment (15 of 62) and family members (12 of 62). Other referrals included friends (7 of 62), church, social service agencies, and other inmates (three each); and CJA and the police (two each).⁷ For 48 of the 61 arrestees in the NDS sample, data were available regarding the date the case was referred to NDS. This information was used to determine whether the NDS referral date was before, after or on the same day as arraign-

⁶ In contrast to the July through November 1990 sample of 65, the next sample (February through April 1991) will contain approximately 500 cases, which will allow for comparisons with the court-based (CJA) sample.

⁷ The 19 cases referred by family, friends, etc. (non-institutional referrals) represent almost a third of this very small sample; nonetheless, it is significant that, from its earliest operations, NDS was getting cases directly from the community, as opposed to picking them up on assignment at the court, precinct or central booking.

ment. Three out of four cases were referred after arraignment, 21% before arraignment, and 2 cases (4.2%) on the same day as arraignment.

The 43 of the 65 NDS cases found in the CJA database were those NDS clients arrested in Manhattan during the study period. Most of the remaining NDS cases during this period were docketed in other boroughs (six Bronx, three Brooklyn and one Queens). Three others had 1990 Manhattan docket numbers but did not appear in the CJA database and one had a 1989 Manhattan docket. Two cases were juvenile delinquencies (Family Court), and the remainder were cases that had no docket number, were summonses, never went to court, etc.⁸

Like the other arrestees from the catchment area, the NDS clients are overwhelmingly black (36 of the 41 in the CJA database, or 80% of the 61 cases in the NDS file); most of the remainder are Hispanic (16%). Three-quarters of these NDS clients are male, a slightly lower percentage than would be expected from the 85% males among the NDS catchment area residents who appeared in the CJA dataset. The NDS clients were also slightly younger (median age of 25) than would be expected from the catchment area statistics (median age of 29). Like the other subsamples, however, approximately three-quarters (73%) of them had one or more prior arrests, 40% (15 of 37) had one or more prior felony convictions, and 35% (13 of 37) had one or more prior misdemeanor convictions.

While the CJA data indicate that 86% of the NDS clients were arrested on felony charges, these data should be interpreted with extreme caution.⁹ The most common types

⁸ In addition to these 65 cases, there were another six NDS cases that did not have arrest dates in the NDS computer system. Two of these were Housing Court cases and one was a parole violation; the other three appear to be criminal cases with missing arrest dates.

⁹ With data available on only 43 cases, each case represents 2.3% of the sample; thus the 86% is 37 of 43. Thus, if five of the 10 cases from other boroughs were arrested on misdemeanor charges (which approximates the proportion for Manhattan), the percentage of NDS clients arrested on felony charges would drop to 79% (42 of 53). It is possible that NDS clients were arrested on more serious charges than other Manhattan arrestees;

are harm to persons and property (13 of 43), drug charges (9 of 43), harm to persons (8 of 43) and property crimes (8 of 43). Data on the CJA stamp were available for 37 of the NDS clients: one-quarter of them (9) had verified community ties and were recommended for ROR and another six qualified for ROR, but were unverified. The remaining 22 clients (59%) received no recommendation, primarily because of insufficient community ties (10). Seventeen of the 40 (43%) NDS clients for whom such data were available were released on recognizance at arraignment, and 21 (53%) had bail set but did not make bail at arraignment (two were remanded and none made bail). Fifty-six percent of the cases were transferred to Supreme Court; the remainder stayed in Criminal Court.¹⁰

C. Case Processing for NDS Catchment Area Residents

Because of the very limited size of the NDS client sample, case processing analyses were run on the subsample of arrestees who lived in the original NDS target area.¹¹ The results of these analyses will provide a baseline against which to measure systemic changes in future samples. (Future NDS client samples are expected to be large enough to make comparisons between case processing for NDS clients and those from the catchment area who are represented by non-NDS attorneys.) For these analyses, the cases are divided into those disposed at arraignment and those continued at arraignment. For each subsample, data are presented on arrest, arraignment, and indictment charges; priors; case disposition and sentence; bail and release status. For the cases that were not disposed at arraignment, however, it is not possible to ascertain that from the available data.

¹⁰ Only seven of the Criminal Court and five of the Supreme Court cases were disposed at the time the data were collected; therefore, there will be no further discussion of disposition or sentence data in this report.

¹¹ The arrestees from the original NDS target area, rather than the expanded area, were used in these analyses because the arrest occurred between July and November, 1990, and the catchment area was not expanded until January 1991.

additional information is presented on case processing times, transfers to Supreme Court, time in pretrial custody, warrants issued and returns on warrants.

1. Cases disposed at Criminal Court arraignment

Twenty percent (1,219) of the defendants from the NDS catchment area had their cases disposed at Criminal Court arraignment. Like the NDS catchment area residents as a whole, more than three-quarters (78%) of this group had at least one prior arrest and about a third (32%) had a prior felony conviction. They were, however, more likely to have had a one or more misdemeanor convictions (61%) than the subsample of arrestees who lived in the NDS catchment area (46%).

On the sample arrest, nearly three quarters (74%) of those whose cases were disposed at arraignment were arrested on misdemeanor charges, and an additional 5% were arrested on violations or infractions. (See Table IV-3 for detailed data on arrest charge severity.) Three-quarters of the arrests were drug-related (30%), property crimes (30%), or forgery (18%); the remainder were divided among misconduct (8%), harm to persons (5%), obstruction of justice (3%), harm to person and property (3%), and weapons (2%).

Table IV-3
CATCHMENT AREA ARRESTS
SEVERITY OF ARREST CHARGES FOR CASES DISPOSED AT ARRAIGNMENT

	<u>%</u>	<u>Number</u>
A Felony	-	5
B Felony	3	33
C Felony	2	24
D Felony	9	102
E Felony	7	79
A Misdemeanor	70	788
B Misdemeanor	4	43
Uncl. Misd.	-	5
Violation	4	50
Infraction	-	5
TOTAL	99%	1134

By the time these cases reached arraignment, only 6% of the charges remained felonies; 88% were misdemeanors and 6% violations or infractions. At disposition, 2% of the charges were felonies, 66% misdemeanors, and 32% violations or infractions. As would be expected, 85% of these cases were disposed by a plea of guilty; the remainder received an ACD (10%) or were dismissed (5%). More than half the cases (52%) for which sentence data were available (N=1019) received sentences of imprisonment. About a third (34%) received conditional discharges and 7% fine or imprisonment; four percent received fines, and the remaining 2% received other sentences.

2. Cases continued at Criminal Court arraignment

Seventy-three percent of the cases (4,371) of NDS catchment area residents were continued at Criminal Court arraignment.¹² Like those whose cases were disposed at arraignment, nearly three-quarters of this group (72%) had a prior arrest history and about a third (31%) had one or more prior felony convictions. They were less likely (42%), however, than those whose cases were disposed at arraignment (61%) to have prior misdemeanor convictions ($X^2 = 102.31$; $df = 1$; $p < .0001$).

In contrast to those defendants whose cases were disposed at arraignment, just over a third (36%) of these defendants were arrested on misdemeanor charges and nearly all the rest were arrested on felony charges (63%). (See Table IV-4 for detailed data on arrest charge severity.) These arrestees were four times more likely than those whose cases were disposed at arraignment to have been arrested on charges of harm to persons (20% vs. 5%)

¹² There were a total of 5,951 arrests in the NDS catchment area subsample. When divided into those disposed at arraignment (20%) and those continued at arraignment (73%), 361 cases (6%) were lost; i.e., they fell into neither category. This is probably the result of missing arraignment dates.

Table IV-4
CATCHMENT AREA ARRESTS
 SEVERITY OF ARREST CHARGES FOR CASES CONTINUED AT ARRAIGNMENT

	<u>%</u>	<u>Number</u>
A Felony	3	130
B Felony	24	1023
C Felony	9	402
D Felony	22	917
E Felony	5	217
A Misdemeanor	34	1441
B Misdemeanor	1	53
Uncl. Misd.	1	42
Violation	1	40
Infraction	-	9
TOTAL	100%	4274

or on charges of harm to persons and property (12% vs. 3%). They were equally likely to have been arrested on drug charges (31%) and less likely than the arraignment disposition group to have been arrested for property crimes (19%) or forgery (7%). (See Table IV-5.)

Table IV-5
CATCHMENT AREA ARRESTS
 ARREST CHARGES: TYPE

	<u>Status at Arraignment</u>	
	<u>Disposed</u>	<u>Continued</u>
Crime against person	5%	20%
Property and Person	3	12
Weapons	2	5
Property	30	19
Drugs	30	31
Sex	-	-
Forgery	18	7
Misconduct	8	3
Obstruction of Justice	3	2
TOTAL	99%	99%

At the time of Criminal Court arraignment, 10% of the charges were reduced to misdemeanors, resulting in just over half (53%) the arrestees whose cases were continued being arraigned on felony charges and 46% arraigned on misdemeanor charges. The CJA stamp for this group of arrestees was not substantially different from the NDS target area as a whole (which is not surprising since they make up 73% of the area residents). Therefore, it follows that, like the group as a whole, 52% were released on their own recognizance at arraignment, 46% had bail set but did not make bail, and 1% were remanded. For those cases in which bail was set at arraignment (N=1105), the median Criminal Court arraignment bail amount was \$1000; and the median pretrial time in detention (for those individuals released at some time prior to January 15, 1991, the date of data collection) was four days.

Less than half the cases (43%) that remained in Manhattan Criminal Court were disposed by the time of data collection. The mean number of appearances in Criminal Court was 2.7 (median = 2), and the average length of time to disposition was 32 days (median = 18). (For cases that were disposed but not sentenced (N=28), the average length of time to disposition was 39 days; median = 21.) One in five of the defendants pled guilty (21%) and a similar number (18%) had their cases dismissed; three percent received ACDs. (Two cases went to trial: one was acquitted and the other found guilty.) By the time the case reached disposition, 25% of the charges were for felonies, 64% misdemeanors, and 11% violations.¹³ Sentence data were available for nearly 75% of the cases that received convictions; one in three (34%) of these received sentences of imprisonment and 30% received conditional discharges. Two percent received fines and 4% either fine or imprisonment; 2% got probation; and the remaining 2% received combination sentences.

¹³ Defendants cannot be convicted of felony charges in Criminal Court, but a case with felony charges can be dismissed or receive an ACD in Criminal Court. According to staff at CJA, it is likely that up to 15% of these felonies were dismissed (or ACD'd), and the remainder are data errors.

Just over a quarter of these cases were subsequently transferred out of Manhattan Criminal Court, most to Supreme Court (23%) and the remainder (3%) to another borough.¹⁴ As would be expected, fully 97% of the charges at Supreme Court arraignment were felonies (See Table IV-6). Sixty percent of the charges were drug-related, 20% harm

Table IV-6
CATCHMENT AREA ARRESTS
SEVERITY OF SUPREME COURT ARRAIGNMENT CHARGES

	<u>%</u>	<u>Number</u>
A Felony	6	13
B Felony	44	102
C Felony	19	45
D Felony	24	56
E Felony	4	10
A Misdemeanor	3	6
Violation	<u>-</u>	<u>1</u>
TOTAL	100%	233

to persons and property, 9% property, and 3% weapons. Only 18% of the defendants were released on recognizance at Supreme Court arraignment; 3% had their bail continued and 3% parole continued; 10% were remanded; and 24% did not make bail. For the remaining

¹⁴ Although 994 cases were transferred to Supreme Court, data were available on between 230 and 270 cases (depending on the variable in question). The reason for this is that the transfer indicator (the variable that indicates whether a case is transferred out of Criminal Court, and if so, where) comes from the Criminal Court file (within the CJA database), while the data regarding Supreme Court processing and outcome come from the Supreme Court file. Because of delays in Supreme Court arraignment (minimally three weeks, and up to six months if the defendant is not in detention) and the fairly short time between arrest (as late as Nov. 30, 1990) and preparation of the CJA tape (1/15/91), many of these cases had not yet been arraigned in Supreme Court. These data will be updated when the next CJA sample is drawn.

42% of the defendants, it was not known whether they made bail.¹⁵ The mean bail set at arraignment (for the 62 cases for which such data were available) was \$14,472, and the median bail (N=62) was \$2,500. The mean length of time in pretrial detention (following Supreme Court arraignment) was 39 days (median = 30). The mean number of appearances in Supreme Court was 4 (median = 3). For cases that had not reached final disposition in Supreme Court by the time the data were collected (N=143), the mean length of time from Supreme Court arraignment until January 15, 1991 was 76 days (median = 63 days).

For cases that were disposed but not sentenced (N=52), the mean case processing time in Supreme Court was 25 days; the median time for these cases was zero, meaning that half the cases were disposed at Supreme Court arraignment. For those cases that were both disposed and sentenced (N=63), the mean length of time from Supreme Court arraignment to disposition was 29 days (median = 21). For these cases, the mean length of time from Supreme Court arraignment to sentencing was 57 days (median = 51). Supreme Court disposition data were available for 270 cases and indicated that 98% of these pled guilty; two defendants were tried and found guilty and one was acquitted; two cases were dismissed. Sentence data were available on 171 cases, and of these 122 (71%) received sentences of imprisonment and another 12% received a split sentence that combined imprisonment and probation. Fifteen percent of the sentenced defendants received probation sentences.

D. Future Research Samples

As was indicated in Chapter I above, the subsequent research samples will allow for more extensive quantitative analyses. Future NDS samples will contain all cases taken in

¹⁵ CJA staff collect data regarding release status at arraignment directly from the Supreme Court calendars; unfortunately, on average, this information is missing (in Manhattan) for 40% of the cases. Because this is an important variable for the research, future analyses will rely on OCA data regarding release status.

during the months of February, March and April (for 1991, 1992 and 1993). The 1991 caseload for this period was approximately 500 cases, more than sufficient for the planned analyses.¹⁶

1. Program Implementation. With regard to the quantitative analyses of program implementation, three more samples are anticipated (one for each year, 1991, 1992, and 1993). Because the initial (pilot period) sample was so small, it will not be possible to include these data in the assessment of operational changes in NDS over time. Therefore, the analyses of the second NDS dataset (February through April 1991) will be limited to descriptive analyses, not unlike those presented here. Once the 1992 data are available, however, it will be possible to assess whether there are changes in operations from 1991 to 1992.

2. Impact Evaluation. In each of the subsequent three years, data on all Manhattan arrests that occur between February and April will be obtained from CJA and OCA. The NDS cases will be those drawn for the implementation analysis, and matched samples will be selected from the CJA and OCA datasets. As was described in the research proposal, the samples will be compared on characteristics of the defendant, case and case processing to measure the impact of NDS operations.

¹⁶ While this sample of 500 is adequate for research purposes, it should be noted that this represents an annualized caseload of approximately 2,000 cases, far below NDS' expected full caseload of between 4,000 and 6,000 cases per year.

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APPENDIX A: DATA SOURCES AND STRUCTURE

The data for this analysis were drawn from three sources: the NDS computerized database, the Criminal Justice Agency (CJA) database, and the Office of Court Administration (OCA) computer system (CRIMS). Each of these agencies provided data on either magnetic tape or disk for all Manhattan arrests that occurred between July 1 and November 30, 1990. All three agencies were very helpful in providing the requested information; however, for ease of processing, it was decided that the data provided by CJA would be the primary source, with NDS and OCA data to be used to fill in the gaps. Details on the specific information obtained from each source are provided below.

The CJA data come from three files: case, Criminal Court, and Supreme Court. The case file contains variables describing the arrest date; borough of the case; defendant's address; whether the instant arrest represents the first arrest for that defendant; number of prior convictions (felony and misdemeanor); number of open cases; number of outstanding warrants; demographic data (defendant's ethnicity, sex, date of birth); arraignment type (summary or DAT); up to four arrest charges per case; whether the CJA interviewer was able to verify the defendant's address, length of time at that address, with whom the defendant lives, employment; CJA recommendation regarding pretrial release; and NYSID. The Criminal Court file is appearance-based, and provides data on each court appearance for each docket number; this structure makes it possible to construct variables describing the arraignment date and disposition; the disposition date and outcome; and sentence date. Also included in this file are release status (for each appearance); bail amount set; affidavit and amended charges; and sentence (including length of a prison or probation term and amount of a fine). The Supreme Court file is also appearance-based, containing multiple records per indictment, and contains data similar to that in the Criminal Court file. The

complete CJA dataset, consisting of all Manhattan arrests between July 1 and November 30, 1990 contains 48,243 records.¹

The second major source of data is the NDS Litigation Support Network (LSN), a local area computer network used by the staff to record all aspects of case processing for their clients. Because NDS is a new agency and unusual for a law office in its reliance on technology, it is not surprising that the early data drawn from its computer system are not complete. Few lawyers (or other law office staff) are accustomed to computerized record keeping, and until they are fully trained and understand the value of such technology, reliance on this database for research data is problematic.² As a result, the only variables being drawn from this database (at least for the current report) are those that are unavailable from any other source. In addition to using this database to identify NDS clients and their separate cases, if there is more than one, the research variables that come from the NDS database include referral source, point of first contact (i.e., pre- or post-arraignment), and data on collateral, non-criminal matters.³

¹ Some of these records represent arrests with multiple dockets. In those cases with multiple dockets, the docket containing the most serious arraignment charge was included in the final analysis and the less serious dockets were eliminated. This arrest-event based file contains 45,457 records.

² The system is a reliable baseline record of clients and the number of cases each client has; however, entry of more detailed data about clients and cases is still evolving -- most programs (data screens) are in place, but data entry by staff is still incomplete.

³ Retrieval of information from the LSN database has proven to be an iterative process, with the first run having very large amounts of missing data and data entry errors. Once this information was fed back to NDS staff, however, the errors were corrected, and the second run was vastly improved. The senior staff member at NDS who holds responsibility for the LSN hardware and software finds the information fed back to him from the research staff to be valuable, and he is very amenable to suggestions for changes to make the computerized data more useful to the research. Thus, new variables have been added, at the request of research staff, that will be available for analysis of future samples.

The OCA database is being used to collect information on the co-defendants, number of cases covered by the disposition, and the method of disposition (e.g., plea or jury trial).⁴ Using the CJA dataset as the base, the variables collected from the NDS and OCA files are merged (by docket or indictment number) to form an analysis dataset. This dataset can then be subdivided into relevant subsamples and analyzed.

⁴ Type of representation (Legal Aid, 18B, private attorney, or pro se) and changes in representation are part of the OCA system but data are not being routinely entered in these fields. It is hoped that analyses of future samples can include number of attorney type changes as a variable; however, this will depend on whether OCA begins systematic coding of this information.

APPENDIX B: MANHATTAN RESIDENTS ARRESTED IN MANHATTAN
BETWEEN JULY 1 AND NOVEMBER 30, 1990

Table B1

ETHNICITY

	<u>%</u>	<u>Number</u>
Black	51	10088
White	13	2577
Hispanic	34	6673
Other	2	426

Table B2

SEX

	<u>%</u>	<u>Number</u>
Male	87	17,532
Female	13	2,635

Table B3

PRIORS

	<u>%</u>	<u>Number</u>
Prior Arrest	72	10,732
Felony Conviction	32	4,508
Misdemeanor Conv.	44	6,551

Table B4

ARREST CHARGES: SEVERITY

	<u>%</u>	<u>Number</u>
A Felony	2	424
B Felony	21	3991
C Felony	7	1257
D Felony	17	3204
E Felony	5	1034
A Misdemeanor	44	8339
B Misdemeanor	2	440
Uncl. Misd.	1	155
Violation	2	310
Infraction	-	56

Table B5

ARREST CHARGES: TYPE

	<u>%</u>	<u>Number</u>
Crime against person	15	2903
Property and Person	9	1654
Weapons	4	711
Property	21	3946
Drugs	34	6474
Sex	-	59
Forgery	10	1905
Misconduct	5	898
Obstruction of Justice	2	370
VTL	1	218

Table B6

CJA STAMP

	<u>%</u>	<u>Number</u>
Recommended, Verified Ties	18	2759
Qualified, Unverified	17	2549
No Recommendation		
Insufficient Ties	39	5844
Residence Problem	2	339
Interview Incomplete	1	91
Bench Warrant	20	3022
No NYSID	2	306
Other	2	226

Table B7

RELEASE STATUS AT ARRAIGNMENT

	<u>%</u>	<u>Number</u>
ROR	54	7084
Bail made	1	138
Bail not made	44	5750
Remand	1	138

Table B8

TRANSFERRED TO ANOTHER COURT

	<u>%</u>	<u>Number</u>
None	79	15113
Supreme Court	18	3465
Other borough	2	406

Table B9

CRIMINAL COURT DISPOSITION

	<u>%</u>	<u>Number</u>
Not disposed	40	5975
Pled guilty	41	6129
Dismissed	14	2122
ACD	6	882

Table B10

CRIMINAL COURT SENTENCE*

	<u>%</u>	<u>Number</u>
Imprisonment	43	785
Conditional Discharge	43	769
Fine or imprisonment	8	149
Fine	3	58
Probation	2	44
Other	-	4

*Data available on 9% of cases.

Table B11

SUPREME COURT DISPOSITION

	<u>%</u>	<u>Number</u>
Not disposed	75	2610
Pled guilty	24	832
Dismissed/Acquitted	-	15
Tried, guilty	-	6
Abated	-	2

Table B12

SUPREME COURT SENTENCE

	<u>%</u>	<u>Number</u>
Imprisonment	71	412
Probation	14	81
Prison & Probation	12	72
Other	2	13

APPENDIX C: NDS CATCHMENT AREA RESIDENTS ARRESTED IN
MANHATTAN BETWEEN JULY 1 AND NOVEMBER 30, 1990

Table C1

ETHNICITY

	<u>%</u>	<u>Number</u>
Black	81	4652
White	3	183
Hispanic	16	896
Other	1	48

Table C2

SEX

	<u>%</u>	<u>Number</u>
Male	85	5035
Female	15	884

Table C3

PRIORS

	<u>%</u>	<u>Number</u>
Prior Arrest	73	3274
Felony Conviction	32	1385
Misdemeanor Conv.	46	2008

Table C4

ARREST CHARGES: SEVERITY

	<u>%</u>	<u>Number</u>
A Felony	2	140
B Felony	19	1075
C Felony	8	440
D Felony	18	1052
E Felony	5	306
A Misdemeanor	43	2463
B Misdemeanor	2	111
Uncl. Misd.	1	48
Violation	2	94
Infraction	-	16

Table C5

ARREST CHARGES: TYPE

	<u>%</u>	<u>Number</u>
Crime against person	17	991
Property and Person	10	568
Weapons	4	230
Property	22	1276
Drugs	30	1688
Sex	-	11
Forgery	10	549
Misconduct	4	251
Obstruction of Justice	2	101
VTL	1	64

Table C6

CJA STAMP

	<u>%</u>	<u>Number</u>
Recommended, Verified Ties	16	719
Qualified, Unverified	18	831
No Recommendation		
Insufficient Ties	37	1686
Residence Problem	2	98
Interview Incomplete	1	25
Bench Warrant	22	977
No NYSID	2	108
Other	2	80

Table C7

RELEASE STATUS AT ARRAIGNMENT

	<u>%</u>	<u>Number</u>
ROR	54	2096
Bail made	1	23
Bail not made	44	1740
Remand	1	47

Table C8

TRANSFERRED TO ANOTHER COURT

	<u>%</u>	<u>Number</u>
None	80	4469
Supreme Court	18	1001
Other borough	2	130

Table C9

CRIMINAL COURT DISPOSITION

	<u>%</u>	<u>Number</u>
Not disposed	42	1861
Pled guilty	39	1722
Dismissed	15	662
ACD	5	222

Table C10

CRIMINAL COURT SENTENCE*

	<u>%</u>	<u>Number</u>
Imprisonment	47	238
Conditional Discharge	43	218
Fine or imprisonment	4	19
Fine	3	15
Probation	3	15
Other	1	4

*Data available on 9% of cases.